

GENERAL SYNOD**Explanatory Memorandum to the Payments to the Ecclesiastical Offices (Terms of Service) (Amendment) Directions 2015****Background**

1. Regulation 23 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 provides that an office holder under Common Tenure shall be entitled to maternity, parental, and adoption leave and time off work to care for dependants in accordance with directions given by the Council in the exercise of its functions as the Central Stipends Authority. In giving any such directions, the Council is required to have regard to the corresponding rights of employees under the Employment Rights Act 1996. Directions must be approved by the General Synod and laid before Parliament as a Statutory Instrument.
2. Paragraph 2(1) of the Ecclesiastical Offices (Terms of Service) Directions 2010 ('the 2010 Directions') confers on office holders an entitlement to maternity, paternity, parental and adoption leave for the same periods and subject to the same conditions as apply to an employee. However, taken in conjunction with the definitions in Paragraph 1(2), the effect is that this entitlement applies only to those employee rights which were in force on 1st January 2011, the date when the 2010 Directions came into effect.
3. The Explanatory Memorandum relating to the 2010 Directions (GS 1784X) makes it clear that freezing the entitlement in this way was a deliberate policy decision at the time. The intention was to allow the Council to assess the impact of any changes to the statutory entitlements that might be made in the future before deciding whether those changes should apply to office holders and, if so, whether any adjustments were required.
4. The Shared Parental Leave Regulations 2014, which came into force on 1st December 2014, confer new rights on employees in relation to births and adoptions from April 2015. In summary, after the mother or adopting parent has taken two weeks' compulsory leave, eligible parents can share the remaining leave between them.
5. At its meeting in March 2015, the Archbishops' Council considered whether these rights should be extended to office holders and concluded that they should. The Council was of the view that there was no justification for treating clergy and diocesan employees differently in relation to shared parental leave. The new regulations would afford clergy families a greater degree of flexibility in balancing the demands of ministry and childcare, and could be of particular help to women wishing to return to active ministry soon after the birth of a child.
6. The Council also agreed that the policy adopted in 2010 should be changed, so that all amendments to the law relating to maternity, paternity, parental and adoption leave for

employees would automatically apply to office holders under Common Tenure unless and until Directions made further provision to the contrary.

7. The Council accepted that there were sound arguments in principle and practice for adopting such a change of policy:
 - a. One of the assumptions undergirding the Terms of Service legislation is that office holders should have parity with employees in their conditions of service unless there are good grounds for treating them differently.
 - b. Stipendiary office holders already have employee rights in relation to maternity, paternity and adoption pay by virtue of their NI contributions, so it is inconsistent not to give them the corresponding rights in relation to leave.
 - c. Given that this is a developing area of employment law, and that Synod meets at most three times a year, it is not always possible to put amending Directions in place before the relevant changes for employees take effect. Indeed, this has happened in the present case. The resultant disparity is potentially unfair to clergy, and confusing for diocesan staff.
 - d. Most dioceses are now operating a mixed economy in which clergy and lay ministers can expect to move between employed and office holder roles. It is far simpler if dioceses can apply the same family leave arrangements to all their ministers.
 - e. There will be savings in staff and Synodical time if amending Directions do not have to be produced every time there is a change to employee rights. There remains the option of disapplying a particular change if necessary.

The draft Directions

8. The draft Ecclesiastical Offices (Terms of Service) (Amendment) Directions reflect the change of policy agreed by the Council by amending Paragraph 1(2) of the 2010 Directions to provide that references in those Directions to the Employment Rights Act 1996, or to regulations made under it, are references to that Act, or to those regulations, as amended from time to time (rather than, as is currently the case, as references to the Act or regulations as they had effect on 1 January 2011).
9. The effect of this amendment is that all changes to the law relating to maternity, paternity, parental and adoption leave for employees made since 1 January 2011 – including the Shared Parental Leave Regulations 2014 – and all future changes will automatically apply to office holders under Common Tenure unless and until further provision is made to the contrary.

**The Legal Office
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