

GENERAL SYNOD

THE ECCLESIASTICAL OFFICES (TERMS OF SERVICE) (AMENDMENT) REGULATIONS 2017

Explanatory Memorandum

Summary

1. The Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2017 (“the Amendment Regulations”) make provision for the holding of ecclesiastical office beyond the age of 70.

Legislative background

2. Under the Ecclesiastical Offices (Age Limit) Measure 1975 (“the 1975 Measure”) the term of office of an ecclesiastical office holder automatically comes to an end when the holder of the office attains the age of 70. That Measure also provides that a person who has attained the age of 70 is not eligible for appointment to an ecclesiastical office.
3. However, it is already possible for certain ecclesiastical offices to be held beyond the age of 70.
4. First, the 1975 Measure itself provides a limited amount of flexibility. It includes provision under which an archbishop may continue a diocesan bishop in office for up to a year beyond the age of 70. It also provides for a diocesan bishop to continue a suffragan bishop, dean, archdeacon or residentiary canon in office beyond the age of 70 for up to one year and an incumbent for up to two years. The 1975 Measure makes provision under which Her Majesty may continue an archbishop in office for up to one year.
5. Secondly, regulation 29(1)(b) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 (“the 2009 Regulations”) currently enables a bishop to appoint, or continue in office, a priest in charge, a team vicar, an assistant curate or other licensed office holder who has attained the age of 70. Such an appointment must be time limited but it can be renewed and there is no prescribed limit on the number of renewals.

The Amendment Regulations

6. The Amendment Regulations make comprehensive provision for holding office beyond the age of 70 by ecclesiastical office holders (other than the archbishops¹) who hold office under Common Tenure.² This provision replaces the existing provision (summarised in paragraphs 4 and 5 above) so far as office holders who are on Common Tenure are concerned.
7. The Amendment Regulations enable bishops, deans, archdeacons and residentiary canons to be continued in office beyond the age of 70 for a fixed term, or a series of fixed terms, up to

¹ Any continuance in office of an archbishop beyond the age of 70 will continue to be provided for by section 2 of the 1975 Measure. (See paragraph 4 above.)

² The Amendment Regulations do not (and cannot) apply to those who continue to hold office on a freehold basis (i.e. any office holder who continues to hold a freehold office held by him or her before 31 January 2011 and who has not opted in to Common Tenure). Provisions described in paragraph 4 above will still apply in relation to those who continue to hold freehold offices. It remains open to freehold office holders to opt in to Common Tenure should they wish to do so.

a maximum age of 75. They do not provide for a person who has already attained the age of 70 to take up a new appointment as a bishop, dean, archdeacon or residentiary canon.

8. The Amendment Regulations provide for a person to take up a new appointment as an incumbent, team vicar, priest in charge, assistant curate or to any other licensed office, or to be continued in any of those offices, after they have attained the age of 70. The appointment or continuation must be for a fixed term, or a series of fixed terms. There is no upper age limit prescribed by the Regulations for an appointment to, or continuation in, these offices.
9. The provisions of the Amendment Regulations are permissive: they do not require office holders to continue in office beyond the age of 70. Nor do they confer an entitlement on an office holder to hold office beyond that age; whether an office holder may do so is in the archbishop's or bishop's discretion.
10. The Amendment Regulations have no bearing on the age at which a member of the Church of England Funded Pension Scheme may retire without a deduction of pension (which is set at 68 by the rules of the Funded Scheme).

Detailed notes on the provisions of the Amendment Regulations

11. **Regulation 1** of the Amendment Regulations provides for their citation and commencement.
12. **Regulation 2(1)** of the Amendment Regulations inserts a new regulation 29A into the 2009 Regulations to make provision for the holding of office beyond the age of 70 for ecclesiastical office holders who hold office under Common Tenure.
13. *Regulation 29A(1)* introduces the provisions of Regulation 29A. It provides for a person who has attained the age of 70 and who holds, or is to hold, office under Common Tenure to be appointed, or continued in office, by virtue of a direction given under regulation 29A. The appointment or continuation in office of a person who has attained the age of 70 must be for a fixed or limited term.
14. *Regulation 29A(2)* enables an archbishop to give a direction so that a person holding the office of diocesan bishop in the archbishop's province may continue to hold that office beyond the age of 70. The period for which he or she may continue to do so must be specified in the archbishop's direction.
15. *Regulation 29A(3)* enables the bishop of the diocese to give a direction so that a suffragan bishop or a dean may continue to hold that office beyond the age of 70. The period for which he or she may continue to do so must be specified in the bishop's direction. The diocesan bishop may only give a direction in respect of a suffragan bishop or a dean if the archbishop of the province agrees with the diocesan bishop that the direction should be given.
16. *Regulation 29A(4)* enables the bishop of the diocese to give a direction (without reference to the archbishop) so that an archdeacon or a residentiary canon may continue to hold that office beyond the age of 70. The period for which he or she may continue to do so must be specified in the bishop's direction.
17. *Regulation 29A(5)* enables the bishop of the diocese to give a direction so that a person who has attained the age of 70 may be appointed, or continued in office, as an incumbent, team vicar, priest in charge, assistant curate or as the holder of any other office to which the holder is licensed by the bishop. The period for which he or she is to hold office must be specified in the bishop's direction.

18. *Regulation 29A(6)* provides that the archbishop or bishop may give further directions so that an appointment or continuation in office beyond the age of 70 can be extended one or more times.
19. *Regulation 29A(7)(a)* provides that the period for which a bishop, dean, archdeacon or residentiary canon is continued in office must begin on the day on which the person attains the age of 70, or – if the person’s term of office has already been extended – on the day which immediately follows the last day of the previous extension.
20. *Regulation 29A(7)(b)* limits the period for which a bishop, dean, archdeacon or residentiary canon can be continued in office so that an extension (or series of extensions) cannot continue beyond the date on which the person attains the age of 75.
21. *Regulation 29A(8)(a)* provides that the period for which an incumbent, team vicar, priest in charge, assistant curate or other licensed office holder may be appointed or continued in office must begin on or after the day on which the person attains the age of 70, or – if the person’s term of office has already been extended – on the day which immediately follows the last day of the previous extension.
22. *Regulation 29A(8)(b)* provides that the period for which an incumbent, team vicar, priest in charge, assistant curate or other licensed office holder is appointed or continued in office must end on a specified date or on the occurrence of a specified event (e.g. reaching a particular age) but that date or event may be after the person has attained the age of 75.
23. *Regulation 29A(9)* requires the archbishop or diocesan bishop, before deciding whether to give a direction under Regulation 29A, to form a view as to a person’s capability to perform the duties of the relevant office during the term of his or her proposed appointment or continuation in office. If the archbishop or diocesan bishop does not consider that the person will be capable of performing the duties of the office throughout the proposed period, the archbishop or diocesan bishop must not give a direction under regulation 29A for that person to be appointed or continued in office.³
24. *Regulation 29A(10)* provides for the giving of guidance by the Archbishops’ Council to which an archbishop or bishop must have regard in deciding whether to give a direction under regulation 29A. This provision would, for example, enable the Council to provide guidance to the archbishops and bishops on what steps they should take in order to ascertain (for the purposes of regulation 29A(9)) a person’s capability to perform the duties of an office. Guidance could also indicate other matters which should, or should not, be taken into account by the archbishops or bishops in deciding whether to give a direction.⁴
25. *Regulation 29A(11)* provides that an archbishop’s or bishop’s direction under regulation 29A must be in writing.
26. **Regulation 2(2)** of the Amendment Regulations makes transitional provision to cover the case of an office holder currently holding office beyond the age of 70 by virtue of regulation 29(1)(b) of the 2009 Regulations. (See paragraph 5 above.)

³ The fact that regulation 29A(9) prohibits the archbishop or bishop from giving a direction unless he or she considers that the capability requirement is met will mean that the archbishop or bishop will have the protection of an exception from provisions of the Equality Act 2010 that are concerned with age discrimination. Should the archbishop or bishop come to the view that the capability requirement is not met in a particular case, and therefore decline to give a direction under regulation 29A, the archbishop’s or bishop’s decision will not amount to a contravention of the Equality Act. See the Equality Act 2010, Schedule 22, paragraph 1 (statutory authority).

⁴ An illustrative draft of guidance that could be made under this provision is being circulated separately to members.

27. **Regulation 2(3)** of the Amendment Regulations amends regulation 29(1) of the 2009 Regulations to remove the existing provisions concerned with the holding of office beyond the age of 70 by priests in charge, team vicars, assistant curates and other licensed office holders. Because those office holders are now covered by the new Regulation 29A(5) the existing provisions relating to them are redundant.
28. **Regulation 2(4)** of the Amendment Regulations makes a consequential amendment to the 1975 Measure. Section 1 of the 1975 Measure automatically terminates an office holder's term of office on his or her attaining the age of 70, and makes him or her ineligible to be appointed to an office after that. Regulation 2(4) disapplies the provisions of section 1 in relation to an appointment that has been made or continued by virtue of a direction given under the new regulation 29A.
29. **Regulation 2(5)** of the Amendment Regulations makes a further consequential amendment to the 1975 Measure. Section 3 of the 1975 Measure contains the existing provisions which provide for the limited continuance in office of bishops, deans, archdeacons, residentiary canons and incumbents. (See paragraph 4 above.) In the case of those who hold office under Common Tenure, those provisions are superseded by new regulation 29A. The amendment therefore confines the application of section 3 of the 1975 Measure to those who do not hold under Common Tenure (i.e. persons who continue to hold a freehold office held by them before 31 January 2011 and who have not opted in to Common Tenure).

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January 2017