

GENERAL SYNOD

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE)
(CONSEQUENTIAL PROVISIONS) ORDER 2012

Explanatory Memorandum

Background

1. Section 11 of the Ecclesiastical Offices (Terms of Service) Measure 2009 ('the 2009 Measure') empowers the Archbishops' Council to make provision by Order for such amendments or repeals of any Measure or other enactment, and such transitional matters, as the Council may consider necessary or expedient in consequence of the Terms of Service legislation. Such an Order must be laid before General Synod for approval in the same way as any Regulation made under the 2009 Measure, before the expiry of the period of five years from the date on which the order-making power came into force.
2. The relevant sub-sections of section 11 were brought into force with effect from 27th September 2010. Orders made under those provisions must therefore be laid before General Synod within a period of five years from that date. The first such Order¹, containing a number of transitional and consequential provisions, was approved by General Synod in November 2010 and came into force on 31st January 2011.
3. The draft Ecclesiastical Offices (Terms of Service) (Consequential Provisions) Order 2012 ('the draft Order') makes a number of amendments to the Mission and Pastoral Measure 2011² ('the 2011 Measure') which are considered necessary or expedient in consequence of the 2009 Measure. The 2011 Measure, which consolidates the text of the Pastoral Measure 1983 as amended by subsequent legislation, received the Royal Assent on 24th May 2011 but has not yet been brought into force. Once the amendments contained in the draft Order have been made, the intention is to bring the 2011 Measure into effect as soon as practicable.

Paragraph 1 (Citation and coming into force)

Paragraph 1 makes provision for the citation and commencement of the draft Order.

Paragraph 2 (Consequential amendments)

Paragraph 2 provides that the consequential amendments to the 2011 Measure set out in the Schedule shall have effect.

¹ The Ecclesiastical Offices (Terms of Service) (Consequential and Transitional Provisions) Order 2010 SI 2010 No. 2847

² 2011 No. 3

Schedule

Paragraph 1 of the Schedule amends s.34 of the 2011 Measure to restore the particular authorisation which may be given by licence to a deacon in a team ministry to perform, so far as consistent with his or her office, all such offices and services as may be performed by an incumbent. This was inadvertently removed by the 2009 Measure when the provision which allowed such deacons to be appointed on a fixed-term basis was repealed.

Paragraph 2 of the Schedule amends s.39(1) of the 2011 Measure, which currently provides that, where a pastoral scheme dissolves a benefice, archdeaconry or deanery or abolishes or results in the abolition of the office of vicar in a team ministry, the scheme may be brought into operation without the assent of the office holder affected and without waiting for a vacancy in the office concerned. Paragraph 2 extends this provision to other offices held under Common Tenure. This amendment is necessary because offices held under a bishop's licence were formerly terminable by the bishop on notice or summarily, but under s.3 of the 2009 Measure this is no longer possible. It will therefore be the pastoral scheme which – for example – results in the abolition of the office of a priest in charge when the benefice to which he or she is licensed ceases to exist.

Consideration has been given as to whether s.39(3) of the 2011 Measure should be similarly amended. This sub-section states that, where a pastoral scheme will or may have the effect of dissolving a benefice or archdeaconry or abolishing the office of a team vicar, and where the office in question is not vacant, such provision is not to come into effect until a date at least six months after the scheme is made or, if its operation is contingent on some event, at least six months after the happening of that event. The purpose of this provision is to allow the office holder ample time to look for another post.

The Remuneration and Conditions of Service Committee (RACSC) has come to the view that, although it is not strictly necessary that this provision should be extended to other office holders under Common Tenure, it would be expedient to do so, given that one of the core principles underpinning the Terms of Service legislation is that clergy should serve under the same conditions of service so far as practicable. The Pastoral Committee of the Church Commissioners supports this approach. However, because these discussions were concluded too late for this amendment to be included in the present draft Order, it has been agreed that it should be the subject of a further Order to be brought forward at a future group of sessions.

Paragraph 3 of the Schedule amends s.40 of the 2011 Measure. Shortly before the 2009 Measure was brought into force, it was discovered that certain paragraphs in Schedule 2 of that Measure would, if enacted, have conferred rights to full compensation for loss of office under pastoral reorganisation on all office holders under Common Tenure instead of – as was always intended and as Regulation 30(2) and (5) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 provides – restricting the compensation of those not already so entitled to a maximum of one year's loss of office. In consequence, these paragraphs of Schedule 2 were not

brought into force and provision for their repeal will be included in the next Church of England (Miscellaneous Provisions) Measure. However, the changes made by those paragraphs to the Pastoral Measure 1983 had already been incorporated into the text of the 2011 Measure. Paragraphs 3 and 6 of the draft Order therefore restore the original text of the Pastoral Measure 1983 in the relevant places, so ensuring that only incumbents, archdeacons and vicars in team ministries (who were already entitled to compensation before the 2009 Measure) have full compensation rights.

Paragraph 4 of the Schedule amends s.45(1) of the 2011 Measure to take account of the provisions of s.6 of the 2009 Measure, which conferred on (*inter alia*) a Diocesan Parsonages Board ('DPB') power to acquire land for the purposes of housing a person holding office under Common Tenure in respect of whom it is the relevant housing provider, and to dispose of land which is no longer required for this purpose.

The amendments contained in paragraph 4 enable a pastoral scheme or order to provide:

- (a) for land held by a DPB to be transferred to an incumbent to become a parsonage house; or
- (b) for a parsonage house or land to be transferred to a DPB for the purpose of its functions under the 2009 Measure.

The first option could be used where, for example, a team ministry is dissolved and reconstituted as a number of separate benefices and it is proposed that a house held by the DPB for occupation by a team vicar should become the parsonage house of one of the new benefices. An example where the second option would be appropriate is the unification of two benefices, where one of the parsonage houses is to be used to house an assistant curate.

Paragraph 5 of the Schedule adds to s.106(1) of the 2011 Measure a definition of the term 'Parsonages Board' for the purposes of the amendments contained in paragraph 4 of the Schedule.

Paragraph 6 of the Schedule makes amendments to Schedule 4 to the 2011 Measure to restore the original text of the Pastoral Measure 1983 in various places, for the reasons explained above in relation to paragraph 3 of the Schedule.

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