

Draft Ecclesiastical Offices (Terms of Service) Measure
Draft Ecclesiastical Offices (Terms of Service) Regulations
Draft Amending Canon No 29

Introductory Material, Explanatory Memorandum and
Annex of Supplementary and Illustrative Material



GENERAL SYNOD

**DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE
DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) REGULATIONS
DRAFT AMENDING CANON no 29**

**INTRODUCTORY MATERIAL
EXPLANATORY MEMORANDUM
ANNEX OF SUPPLEMENTARY AND ILLUSTRATIVE MATERIAL**

Part One of this paper introduces the draft legislation on Clergy Terms of Service which is before the General Synod for first consideration at the February group of sessions and provides information about those aspects of the Terms of Service project which do not require detailed legislation. Part Two contains the detailed Explanatory Memorandum on the legislation. Part Three contains supplementary and illustrative material.

PART ONE: INTRODUCTORY MATERIAL

Principles of the draft legislation

1. The legislation has been prepared by the Terms of Service Implementation Group in accordance with resolutions carried by large majorities of the Synod in February and November 2005 asking for legislation to give effect to them.
2. An important element in the draft legislation is that the principles it embodies are intended so far as possible to apply to all clergy, to archbishops and bishops as well as parish and cathedral clergy; to non-stipendiary ministers and those in house for duty posts. It is unacceptable that different rules as to security of tenure and housing should apply as between parochial and other clergy; and that there should continue to be within the ranks of parochial clergy a sharp disparity between the historical security of the freehold and the very insecure position of some others.
3. The Implementation Group, like the Review Group before it, attaches great importance to the distinctive ethos of the ordained ministry as expressed in the phrase 'the cure of souls', which speaks of a relationship between priest and people and priest and bishop. Bringing greater justice and greater clarity to terms of service does not threaten that ethos. Unfairness and muddle do not serve the Gospel. Reform in this area of the Church's life can quite properly draw on best practice in other professions where to do so accords with crucial notions at the heart of the Christian faith: that human beings are made in the image of God and therefore deserve dignity and respect in their life and work; that we should do

unto others as we would have them do unto us; and that the Christian community is modelled on the Body of Christ in which each part of the Body is called upon to play its proper part to support and build up the life of the whole.

4. The principles embodied in the draft legislation reflect the remit given by the Archbishops' Council to the Review Group at the end of 2002. It was to review the terms under which the clergy hold office, looking at the future of the freehold and the position of the clergy in relation to statutory employment rights. That Group was to ensure a proper balance between rights and responsibilities, and full protection against possible injustice.
5. The main recommendations accepted by the Synod were
 - a) that the clergy should not (as some had suggested) become employees of the Diocesan Board of Finance but should continue to enjoy the status of 'office-holders' in a way which reflected the context within which their ministry is set, and with that degree of autonomy which enables that ministry to be exercised effectively;
 - b) that, while remaining office-holders, they should be given by law a range of rights enjoyed by employees, including rights in connection with remuneration, annual and other leave, and the right of access to an independent tribunal to claim unfair dismissal;
 - c) that these rights should be conferred by Church legislation, to ensure that they were expressed in ways which suited the particular nature of the Church of England and the relationships within it;
 - d) that, while different groups of clergy have widely differing responsibilities, all should, in principle, enjoy the same high degree of security of tenure by holding office on Common Tenure;
 - e) that fixed term appointments (except for training posts and some other special cases) and the possibility of summary removal from office should, where possible be abolished;
 - f) that the Church of England should enhance its human resource (HR) provision to ensure fairness and clarity of expectation in appointments and the development of an individual's ministry;
 - g) that there should be a 'capability procedure', to establish ways of dealing with difficulties before they escalate, and to tackle the exceptional cases of continuing under-performance with a proper balance between accountability and the need to protect clergy from unreasonable expectations;
 - h) that all clergy should take part in regular and discerning Ministerial Development Reviews and make full use of Continuing Ministerial Education to help them flourish and develop in the expression of their vocation;

- i) that, recognising the importance of housing for the clergy and their families, there should be an easily-understood set of rights and obligations applying whenever housing was provided by a Church body, be it the Church Commissioners, a cathedral or a diocese, replacing the obscure and incomplete provision in the existing law; and
- j) that anyone holding a freehold office when the legislation took effect should be able to opt, but would not be required, to transfer to Common Tenure.
6. The nature of the choice between the freehold (as held by the incumbent of a benefice) and Common Tenure is illustrated in the following Table.

	Freehold	Common Tenure
The Canons	Apply	Apply
Statement of rights and responsibilities	No	Statement of particulars has to be provided within one month of starting the post
Right to a minimum stipend	No	Yes
Right to suitable accommodation	Yes	Yes
Right to specified time off	Not stated	A minimum of 28 days' annual leave and one day off per week
Right to parental and other forms of leave	Not stated	Full provision in Regulations.
Continuing Ministerial Education	No legal requirement to provide or participate	Suitable provision and participation required under Regulations
Ministerial Development Review	No legal requirement to provide such a review or participate	Provision under Regulations
Grievance Procedure	Existing procedure applies	New procedure will apply
Parsonage house	Incumbent owns as corporation sole. Diocesan Parsonages Board maintains	Diocesan Parsonages Board owns and maintains
Sale of parsonage house	An absolute veto over the sale of the parsonage house	A right of representation to the Church Commissioners in the event of a proposed sale. DPB would need to convince the Church Commissioners that the sale was appropriate, notwithstanding the representation.
Church and churchyard	Owned by incumbent as corporation sole	Owned by incumbent as corporation sole

Clergy Discipline Measure	Applies	Applies
Capability Procedure	Does not apply	Applies
Removal from office	Following: a breakdown of pastoral relationships; disability; after pastoral reorganisation; reaching retirement age	Following: a recommendation of removal on grounds of incapability (including disability) in cases where the capability procedure has been completed without improvement; after pastoral reorganisation; reaching retirement age
Compensation for loss of office on pastoral re-organisation	Schedule 4 of the Pastoral Measure	up to one year's stipend and housing allowance if post designated as subject to pastoral reorganisation at the time of appointment. Otherwise, full schedule 4 provision
Unfair dismissal	No right of appeal	Right to apply to Employment Tribunal

7. The history of the Terms of Service project is described in more detail, particularly for the benefit of those who were not members of the 2000-2005 Synod, in Part Three.

The process

8. Since the work began, effectively at the start of 2003, there have been three debates in the General Synod (in February 2004, February 2005 and November 2005); and an evening session in the July 2006 Group of Sessions was devoted to a presentation and question-and-answer session on the Implementation Group's work.
9. There has also been, and continues to be, a very high level of consultation. Over the four years of their work, the Review Group and Implementation Group have considered a substantial amount of material, including 49 submissions from dioceses, 6 from deanery synods, and 5 from PCCs, submissions from 53 individuals and 17 corporate submissions (including ones from Amicus, the Association of English Cathedrals, the Church Army, the Church Commissioners, the Church Heritage Forum, the Council for the Care of Churches, the Deployment, Remuneration and Conditions of Service Committee, the English Clergy Association, English Heritage and Save Our Parsonages).
10. Members of the Group and the staff serving it have spoken at or attended discussions in many dioceses (the Group receiving oral or written reports on many of these), and with a number of other bodies including representatives of Amicus, the Archbishops' Appointments Adviser, the Archbishops' Secretary for Appointments, the Church Commissioners, the Consultative Group of Diocesan Chairs and Secretaries, the Chairs of

diocesan Houses of Clergy, the Diocesan Secretaries' Conference, DRACSC, the DRACSC CME panel, the Department of Trade and Industry, and regional meetings of Bishops, archdeacons, diocesan secretaries and diocesan chairs.

11. The Group itself met with representatives of Amicus, the Revd Ray Owen, the Clergy Appointments Adviser, the Archbishops' Appointments Secretary, the Revd Jenny Thomas (from the Association of Black Clergy), the Secretary to the Legal Aid Commission and representatives of the Patronage Societies. All dioceses have been invited to comment on draft guidelines for Ministerial Development Review and most have done so. All but one diocese were represented at the first of two Conferences on HR provision last autumn; a second conference is due to be held shortly before the Synod meets.
12. These consultations have shown a high level of interest in, and very wide support for, the principles set out above. Issues raised have prompted some re-thinking (notably the reformulation of some property aspects as a result of concerns expressed by the General Synod in February 2005). Consultations have also revealed great divergences in practice and brought to attention a whole range of special problems. There was also evidence of much misunderstanding of the present position. This is not surprising because the current law is inaccessible, in some respects uncertain, and makes no provision at all in some cases. Although the draft legislation may seem very detailed, it is an enormous simplification of what exists at present.

The Percy and Stewart cases

13. This may be a convenient point to mention two decisions, one of the House of Lords in *Percy v National Board of Mission of the Church of Scotland* and the other of the Employment Appeal Tribunal in *Stewart v New Testament Church of God*. Questions about these cases have arisen not infrequently and the Group has considered very carefully the legal implications of the judgments.
14. Essentially each case was concerned with the jurisdiction of Employment Tribunals to entertain claims by ministers of religion. Hitherto it had been consistently held in a series of cases that the Tribunals had no jurisdiction to entertain unfair dismissal claims because of the categorisation of ministers of religion (of all churches and faiths) as office holders rather than employees. That distinction has not been set aside; but in the two cases the nature of the relationship between the minister and the church was judged to be such as to show an intention to create legal relations sufficient under the relevant legislation to give the Tribunal jurisdiction.
15. Neither case concerns the Church of England (a point specifically mentioned in the House of Lords case) where different relationships exist. However, the effect of the draft legislation before the Synod will be to underline the position of Church of England clergy as office holders while giving a limited jurisdiction to the Employment Tribunals. This should serve to avoid what could be expensive litigation on the issues as they affect the Church of England. This is one example of the greater clarity which the new legislation will create.

Diocesan and dual role posts

16. It may also be appropriate to explain here that the judgment of the courts that parochial clergy (and by implication cathedral clergy, archdeacons and bishops) are office holders rather than employees is because of the nature of the office rather than the fact of being ordained. It is likely that a priest or deacon working in a diocesan post (such as Communications Officer or Diocesan Director of Education) would be regarded in law as an employee and be expected by the courts to have a contract of employment with the same conditions of service as other diocesan employees.
17. The creation of Common Tenure will not alter this legal position. Those whom the courts would regard as employees should have conditions of service set out in a contract of employment. These would be agreed between the parties before an appointment was accepted.
18. The Ministry Division is developing guidance notes as to the legal status, tenure and housing for clergy in these situations. The guidelines will be circulated to dioceses early in 2007.
19. In the case of clergy who hold a parochial post but also have certain diocesan functions (for example as a named adviser to the bishop on rural ministry) which take up only a limited proportion of their time, this diocesan work may be regarded as being subsumed into the parochial office rather than as forming a separate diocesan employment. Where, however, a minister is both a part-time office holder and a part-time employee of the diocese, there should be separate documentation for each post. If either the holding of office or the contract of employment come to an end, the person concerned has the right (subject to any mutually agreed terms in the employment contract) to continue in the other part-time post.

The shape of the legislation

20. The General Synod will be invited to consider three pieces of legislation:-
 - the draft Ecclesiastical Offices (Terms of Service) Measure;
 - the draft Ecclesiastical Offices (Terms of Service) Regulations; and
 - a draft Amending Canon (which, as explained more fully in Part Two, makes consequential changes to the Canons in respect of this and other recent legislation).
21. It is often the case that the most important material is in a draft Measure, whilst Regulations deal with relatively unimportant details. As will be clear from what is said below, this is not the case on this occasion, and it is essential to understand how the various instruments relate to one another. Although the Measure and the Regulations are handled differently at the parliamentary stage, it must be stressed that
 - (a) both the Measure and the Regulations are legally-binding instruments; and

(b) both will receive the same level of scrutiny during their passage through the Synod (as will any future amendments).

22. The legislation also provides that the capability procedure, which will be binding, and any (non-binding) Codes of Practice under this legislation will require the approval of the Synod.

The draft Regulations

23. It was one of the recommendations of the Review Group that those rights and responsibilities of the clergy which needed to be set out in legislation should form a set of 'Clergy Terms of Service Regulations'. The term 'clergy' is not now used in the titles of the legislation, as there are some stipendiary lay people to whom it will apply.

24. The draft Regulations therefore contain the working rules as to:
- stipend;
 - housing;
 - the prescribed particulars to be given to an appointee on taking up office;
 - leave and other absence from normal duties;
 - tenure (especially the special cases in which fixed-term or time-limited appointments will be allowed);
 - remedies for unfair dismissal; and
 - compensation (made available for the first time) for anyone losing office after serving as what would now be styled 'priest-in-charge' of a benefice awaiting pastoral reorganisation.

25. They also set the framework for Ministerial Development Review, a capability procedure and a grievance procedure.

26. In practice, every newly-appointed person to whom they apply will receive a copy of the Regulations (as amended by the Synod from time to time).

The draft Measure

27. What, then, does the draft Measure do? It was necessary
- to have a provision in a Measure (clause 2 of the draft) in order to ensure that the Regulations have full legal force;
 - to define Common Tenure and the persons to whom it applied (clause 1); and
 - to guarantee security of tenure by spelling out the circumstances in which an appointment on Common Tenure could be ended (clause 3).

28. The rest of the draft Measure is concerned with adapting existing Measures to fit the new situation; much of the existing legislation concerns rights and duties concerning the housing of parish clergy, and this is reflected in the contents of the draft Measure.

Housing

29. As indicated earlier in this paper, the aim has been
- to set out an easily-understood set of rights and obligations applying whenever housing is provided by a Church body; and
 - to avoid having different rules as to housing applying to different groups of clergy.

The proposed rules are in regulations 12 to 16 of the draft Regulations.

30. The Group believes that these strike a fair balance between housing provider and office-holder; they largely reproduce in simpler language the rules as they now apply to freehold incumbents and some other parochial clergy, and apply them to all groups of clergy.
31. Freehold incumbents, but no others, are currently titular ‘owners’ of their houses. The Table below, reproduced from the Group’s earlier report (GS 1593), is an attempt to set out in summary form the nature of the office held by different groups of clergy, the person or body in whom the formal legal ownership of the house is vested, and the person or body responsible for ‘outgoings’ in terms of the repair, maintenance and insurance of the house. The reference to the DBF is in some cases shorthand as decisions may be the responsibility of the Diocesan Parsonages Board or Committee.

Occupant	Freehold office?	House vested in	Outgoings
Archbishops	Yes	Church Commissioners	Church Commissioners
Diocesan bishops	Yes	Church Commissioners	Church Commissioners
Suffragan bishops	Unclear in law	Diocesan Board of Finance (DBF)	DBF
Deans	Yes	The corporate body of the cathedral	The cathedral
Residentiary canons	Varies	The corporate body of the cathedral	The cathedral
Archdeacons	Yes	DBF	DBF
Team rectors	No	Team rector	DBF
Rectors and vicars	Yes	Rector or vicar	DBF
Team vicars	No	DBF	DBF
Assistant curates	No	DBF or PCC or local trust	Varies

32. It will be seen that there is no correlation between freehold office and the vesting of property.
33. Existing legislation effectively transfers almost all the rights of a freehold incumbent as owner to the Diocesan Parsonages Board. Clause 7 of the draft Measure ends this unreal situation, vesting the legal title in the Board. The clergy must have a proper security of tenure in respect of the house in which they are required to live, but what matters is the

degree of security, not the legal form through which that security is given. An incumbent would not be worse off, were equivalent rights to be enjoyed by virtue of possession or occupation of the property, instead of a very notional ownership.

34. The office holder's interests are protected
- (a) by Clause 4 of the Measure, which gives every full-time stipendiary office holder under Common Tenure the right to be provided with suitable accommodation (though another arrangement can be agreed if the office holder so wishes); a right of which no office holder can be deprived unless the office itself is lost; and
 - (b) by Clause 9 and regulation 16 which ensure that no sale or exchange of the relevant house (or the designation of a different house as the parsonage house for a benefice) can proceed over the objections of the office holder unless the Board persuades a body independent of the diocese to allow it to proceed. The burden of persuasion will be on the Board and not on the office-holder.
35. This protection applies generally to those holding office on Common Tenure and is not limited to incumbents of benefices, an example of the policy of applying common rules to enhance the protection enjoyed by clergy in general.

A dual regime

36. Ultimately, the effect of the new legislation will be to remove from the statute book a great deal of unduly complicated and much-amended legislation. The decision that existing freeholders may opt to retain their freehold for the duration of their present appointment means that it is not possible at once to repeal the bulk of the existing housing legislation. Whilst some repeals are effected by clause 14 of and Schedule 4 to the Measure, the principal provisions (in the Parsonages Measure 1938 and the Repair of Benefice Buildings Measure 1972, both as much amended) have to remain in force - but only (see clause 13(4)) in relation to benefices of which the incumbent has chosen to retain the freehold.
37. The Group has no hesitation in reaffirming the decision that existing freeholders may continue to serve on freehold terms, but this does necessarily mean that there will for some considerable time be a dual regime. For most purposes, the practical effect of the housing rules applying to freeholders will be the same as those in the Measure and Regulations but it will be necessary in some cases to refer to provisions in the 1938 and 1972 Measures. Almost any change in complex legislation has transitional difficulties of this sort, and it is a necessary price to pay.

Rights of parochial church councils

38. The rights of parochial church councils are unaffected by this legislation.

Patrons

39. Similarly, no change is made in the rights of patrons. The Group was able to reassure the patronage bodies with whom it met last September on this point, and was able to explain that the new position, under which someone who would now be a priest-in-charge of a parish awaiting parish reorganisation could be instituted as incumbent, may mean that patrons' rights are more consistently respected.

Cathedrals

40. The new rules will apply to cathedral clergy as to all other groups. The legislation will override any inconsistent provisions in the present constitutions and statutes of cathedrals.

Church and churchyard

41. The legislation makes no change in the legal position of parish churches and churchyards, which will remain vested in the existing corporation sole, which is in effect the corporate expression of the 'cure of souls' exercised by the incumbent for the benefit not only of the worshipping community but of all parishioners. This issue only affects incumbents, and is one area in which the principle of common rules applying to all groups of clergy has no relevance.

Legislative process

42. If the Synod so decides, the legislation will go to a Revision Committee in the usual way. The same committee will examine all three pieces of legislation and will ensure that where amendments are made to one instrument the others are adapted as necessary.
43. The Implementation Group is well aware of the complexity of the drafts and that it may have failed to provide for all eventualities. Indeed, part of the complexity of the work has been because we have thought it right to provide for a wide range of possibilities. The Group is confident that the principles enshrined in the legislation continue to have wide support in the Church and will benefit the clergy and the effective ministry of the Church. From the outset, the Group, like the earlier Review Group, has had in mind the need to balance different considerations. So, for example, the introduction of Common Tenure, giving greater security to many clergy, needed to be balanced by the creation of a capability procedure. The Group hopes that the Synod and the Revision Committee will bear this in mind, recognising that adjustments in one part of the legislation may have an effect on the whole.

Human Resource provision

44. The provision of enhanced HR support has always been regarded as a key part of the proposals of the Terms of Service groups. The case for it is independent of any other changes in terms of service: whatever terms of service apply, there will be difficult cases and complex decision-making on which professional guidance should be sought. A number of dioceses have already found it convenient to buy in HR advice from generalist

firms, but others feel that the nature of the Church requires dedicated provision within the Church structures.

45. As already mentioned, two conferences have been arranged to enable diocesan representatives to address the issue of how HR expertise can best be made available. The first saw a presentation of the issues and initial discussion. Dioceses have been asked to take a considered position to be reported to the second Conference in February 2007, before the meeting of the Synod but after this paper was written. It may be possible to give the Synod more information as to the outcome of the second conference.

Draft Capability Procedure

46. Regulation 31 refers to but does not set out the proposed capability procedure. It is intended to enable the church to deal with the rare cases of clergy consistently and seriously under-performing, cases which can cause real damage to the church in a particular area and also damage the reputation of the clergy generally: bad publicity can obscure the fact that most clergy work extremely hard, with devotion and professionalism. The present draft, very largely based on the drafts in both reports of the Review Group received by the Synod in 2004 and 2005, but further refined in the light of comments received on those drafts, is for information rather than debate but written comments and suggestions for improvement can be sent to the Clerk of the Synod. As already mentioned, the Archbishops' Council will ultimately issue the procedure, but will first have to obtain the approval of the Synod and respect the statutory guarantees in regulation 31(4).

Draft grievance procedure

47. When the new legislation comes into effect, a new grievance procedure (the latest draft of which is also in Part Three (Annex 4) of this paper) will replace the existing procedure. The aim of a grievance procedure is to provide a consistent mechanism through which grievances about conditions of service can be expressed. A formal grievance is more than a mere grumble, and requires proper and recorded consideration. Again, the draft continues to be worked on and written comments and suggestions would be welcome; but the legislation does not require the final version of the grievance procedure to receive the Synod's formal approval.

Ministerial Development Review

48. The Review Group's reports recommended that all clergy, including bishops, should be required to participate in a Ministerial Development Review scheme, and that all diocesan bishops should be required to ensure that such a scheme was in place and was properly followed. That Group invited the House of Bishops to devise a ministerial review scheme which would apply to all serving bishops. The House has accepted that invitation and has worked on a suitable scheme.
49. The draft guidelines record that they recognise:

- the responsibility of the Church to assist in developing the skills, talents and abilities of those who have been selected and trained for the ministry so they are better able to meet the demands of ministry today and in the future
 - the relationship between the bishop and his clergy and their shared cure of souls
 - that clergy are called to be deacons or priests but they are appointed to exercise particular offices
 - that bishops, clergy and those they serve are accountable to each other
 - that clergy should have protection from unreasonable expectations
 - that ministry takes place in different contexts; and
 - that clergy should be free to exercise their ministry in a way that is sometimes prophetic.
50. The part of the legislation dealing with Ministerial Development Review also mentions continuing ministerial education and the special needs of those in training posts. The reviews will serve to identify education and training needs, and meeting those needs will be crucial to the effectiveness of the whole process.
51. The Review Group's second report (GS 1564) analysed diocesan practice and began a discussion, which still continues, as to the proper balance between national guidelines designed to ensure a certain consistency across the Church of England and diocesan discretion to reflect the very different circumstances and size of dioceses.
52. More recently draft guidelines were circulated to dioceses for comment, together with some suggested material for use in diocesan schemes. Although the responses contained much supportive comment, there were also criticisms. A number of modifications have been agreed in the light of the comments. These include the following:
- (a) Although there will be national guidelines, the proposal that diocesan schemes should require approval by DRACSC (the relevant national committee) is dropped.
 - (b) Although some form of review once a year is seen as very desirable (not least in parishes, which have a natural annual cycle) the legislation will require a Ministerial Development Review only once in every two years.
 - (c) It is made clear that each diocesan bishop decides who is to conduct reviews (and in particular the extent to which he conducts reviews himself).
 - (d) Various changes are made to clarify and lighten the procedure in some respects, e.g. that the document setting out the context of ministry is prepared only once though updated as necessary, that the reviewee may choose to collect '360 degree' feedback, that objectives may be long-term in nature, and that either the reviewer or reviewee may write the summary.
53. Some concerns have been expressed about the relationship between Ministerial Development Reviews and the capability procedure. There is no direct relationship: the review process is intended to benefit all clergy, whereas the capability procedure will

affect a very small minority. Ministerial Development Review is not a vehicle for the management of capability issues. What is the case is that the capability procedure should never 'come out of the blue'; the issues examined in that procedure should have been aired in discussions with the office holder, including those in the Ministerial Development Review context, and the procedure could be judged defective were that not to have been the case.

54. The current draft of the national Guidelines, taking into account the views expressed in the consultation, appears in Part Three of this paper. It is for the information of the Synod, but Synod members and others in the dioceses may submit comments to the Ministry Division.

In summary

55. The Implementation Group is happy to commend the draft legislation to the Synod, judging that it will benefit our clergy and the Church of England as a whole.

PART TWO: EXPLANATORY MEMORANDUM

A. DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE

1. **Clause 1** introduces the concept of Common Tenure, which is the generic name for the package of terms and conditions of service governed by the legislation, and describes how it will apply to various categories of office holder. In the case of the Archbishops and those who hold office under licence (as opposed to a freehold office), including team rectors and vicars on fixed-term appointments and stipendiary deaconesses, readers and lay workers, their existing offices will be converted to Common Tenure automatically upon the coming into effect of this clause. Freeholders other than the Archbishops will be invited to 'opt in' to Common Tenure. Those who elect not to do so will continue to hold office under the pre-existing terms and conditions until such time as they leave that freehold post.
2. **Clause 2** gives power to the Archbishops' Council to make provision for terms of service by means of regulations. Any regulations must be laid before, and may be amended by, the General Synod and are also subject to approval by both Houses of Parliament.

Much of the detail of the new terms of service is contained in the draft Regulations. This will enable the provisions to be amended, as necessary, by a process that is less time-consuming than the mechanism for amending a Measure, but which still requires Synodical and Parliamentary consent.

3. **Clause 3** describes the circumstances in which an office held under Common Tenure may be brought to an end. These may be summarised as follows:
 - On the death, resignation or retirement of the office-holder;
 - Where the office ceases to exist as a result of pastoral reorganisation;
 - Where the office holder is removed from office following disciplinary proceedings or under the capability procedure;
 - Where the office falls within one of the restricted categories of fixed-term or limited-term appointment described in regulation 29 and the term expires or otherwise determines;
 - Where a licence is held in connection with a contract of employment (for example, as a hospital or prison chaplain or a diocesan officer) and that contract is terminated.

Under Common Tenure, it will no longer be possible for a bishop to revoke an office-holder's licence for any non-disciplinary reason, as is the case at present.

Clause 3(10) extends the compulsory retirement age of 70, which presently applies to freehold offices, to all full-time stipendiary office-holders. It will still be possible to hold a part-time or part-stipendiary office (for example, a house for duty post) after the age of 70.

4. **Clause 4** introduces, for the first time, a statutory right for full-time stipendiary clergy holding office under Common Tenure to be provided with accommodation by a stipulated housing provider. That right may only be waived or varied with the agreement of the office-holder. The relevant housing provider is the Church Commissioners in the case of

archbishops and diocesan bishops, the Chapter in the case of office-holders in a cathedral and the Diocesan Parsonages Board in other cases. A relevant housing provider may agree to assume the responsibilities of another housing provider in a particular case.

5. **Clauses 5, 6 and 7** together with **Schedules 1 and 2** provide for the vesting of parsonage houses in the Diocesan Parsonages Board (DPB) and for the Board to assume new duties in relation to the provision and oversight of housing for the parochial clergy. The constitution and powers of the Board are amended to enable those duties to be carried out effectively and to ensure that parsonage property is afforded proper protection. In particular:
- Where the Diocesan Board of Finance (DBF) is also designated as the DPB, the functions of the DPB must be exercised independently of the other functions of the DBF, and by a discrete committee or committees (Clause 5(3) and Schedule 1 paragraph 11);
 - The membership of the DPB (or the committee/s of the DBF as the case may be) will consist of the archdeacons and other members elected by the diocesan synod in a way which has regard to the need to ensure that both clergy and laity are sufficiently represented (Schedule 1 paragraphs 6 and 12);
 - Where an incumbent elects not to transfer to Common Tenure on the coming into force of the legislation, the parsonage house will only vest in the DPB when that incumbent leaves office (clause 7(2)).
 - Where the DBF is designated as the DPB, property vested in the DPB will not form part of the corporate property of the DBF and will not form part of the DBF's assets in the event of insolvency (Schedule 2 paragraph 3).
6. **Clauses 8 and 9** (together with **Schedule 3** and **regulation 16**) govern the powers of relevant housing providers to deal with the houses of residence in their ownership. These clauses provide for the first time a right for all office holders who are provided with accommodation to object to a disposal or other regulated transaction (as defined in clause 9(1)) relating to the house which they occupy. Other interested parties also have a right of objection in particular cases (clause 9(2)).

Regulation 16 provides in more detail for the exercise of the right of objection. The objection is determined by the Church Commissioners, except in cases where the Commissioners are themselves the relevant housing provider or a consenting party to the transaction, in which case the Archbishops' Council hears the objection. The onus falls on the relevant housing provider to satisfy the determining body that, in all the circumstances, the transaction should proceed.

Schedule 3 deals with various matters relating to regulated transactions. In particular, paragraph 1 of Schedule 3 provides that the net proceeds of sale of a parsonage house under this Measure must be applied in the same way as is presently the case in relation to a sale under the Parsonages Measure 1938 – that is, firstly towards the provision of a replacement house if that is needed. Only after this may any surplus be applied to the diocesan stipends fund or diocesan pastoral account, with the incumbent and other interested parties having a right of representation as to the disposition of such surplus monies.

7. **Clause 10** empowers the Archbishops' Council to issue guidance for the purposes of the legislation in the form of Codes of Practice. It is envisaged, for example, that detailed guidance concerning the inspection, maintenance and repair of parsonage and other clergy houses will be provided by means of such a Code. Any Code issued under this clause requires the approval of the General Synod.
8. **Clause 11** contains a number of supplementary provisions. In particular, Clause 11(6) states that nothing in the Measure shall be taken as creating a relationship of employer and employee between an office holder and any other body.
9. **Clause 12** deals with the interpretation of the Measure and sets out the meaning of certain expressions used in it.
10. **Clause 13** amends various existing statutory provisions relating to housing and to proceedings under the Incumbents (Vacation of Benefices) Measure 1977, in order to disapply these provisions in relation to offices held under Common Tenure. Clause 13(1) and (2) gives power to the Archbishops' Council to make further consequential amendments and repeals by Order if that should prove necessary, subject to the approval of the General Synod and of Parliament.
11. **Clause 14** and **Schedule 4** contain repeals consequent on the provisions of this legislation.
12. **Clause 15** provides for the citation, commencement and extent of the Measure.

B DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) REGULATIONS

PART I: INTRODUCTORY

13. **Regulations 1** and **2** deal with the citation and coming into force of the Regulations, and the interpretation of certain expressions used. Regulation 2(2) provides that where an office holder becomes subject to Common Tenure in respect of an office which he or she already holds, the Regulations will apply as if he or she had taken up that office on the date when he or she became subject to Common Tenure.

PART II: PARTICULARS OF OFFICE

Right to statement of particulars of office

14. **Regulations 3** to **7** introduce an entitlement on the part of every office holder to whom Common Tenure applies to receive within one month after taking up office a written statement of particulars of that office. This is in addition to any licence or other deed of appointment. The statement is provided by a person nominated in accordance with regulation

3(1) and the matters it must contain are set out in regulation 3(4)-(5) and regulation 5. These include details of remuneration and pension; leave entitlement; accommodation and the disciplinary, capability and grievance procedures which apply to the post. Where there is a material change in any of the particulars during the office holder's tenure of office, a supplementary statement setting out the change must be supplied.

15. **Regulation 8** provides that stipendiary office holders are also entitled to an itemised statement of stipend containing the information specified in Regulation 8(2).

Enforcement

16. **Regulations 9 and 10** provide that, where a statement of particulars or an itemised statement of stipend either has not been given or is incomplete or incorrect, the office holder may apply to an employment tribunal to determine what particulars should have been included. Where un-notified deductions have been made from an office holder's stipend, the tribunal may order that these should be repaid.

PART III: RIGHT TO STIPEND AND PROVISION OF ACCOMMODATION

Entitlement to stipend

17. Regulation 11 gives full-time stipendiary office holders the right to receive an annual sum that is no less than the National Minimum Stipend specified by the Archbishops' Council as Central Stipends Authority. There is at present no statutory right to receive any stipend, and this regulation therefore represents a significant improvement in conditions of service.

Provision of accommodation

18. **Regulations 12 to 15** introduce a standard set of terms of occupation for accommodation provided by a relevant housing provider, which may only be varied by written agreement between both parties (Regulation 15(2)).
- Regulation 12 sets out the duties of the housing provider, which include: a duty to have the property inspected by a qualified surveyor every five years; to keep the property in an appropriate state of repair (having regard to the matters specified in regulation 12(3)); to insure it and to pay Council Tax and other recurring charges.
 - Regulation 13 gives the relevant housing provider the right to enter the property for the purposes of carrying out its obligations, on giving reasonable notice except in the case of emergency.
 - Regulation 14 sets out the duties of the office holder in occupation, which include: a duty to use all reasonable endeavours to keep the property clean and free from deterioration; only to use the property as a private residence and for other purposes agreed by the relevant housing provider and not to make any repairs, alterations or additions without consent.

- Regulation 14(2) replaces the current provision in section 36 of the Pluralities Act 1838 with a more generous provision which entitles any member of the household of an office holder on Common Tenure who dies in occupation to continue to occupy the property for a period of at least three months following the office holder's death.
- Regulation 15 provides a mechanism for resolving any dispute concerning the terms of occupation.

Regulated transactions

19. **Regulation 16** deals with the right of the office-holder in occupation and others to object to a regulated transaction relating to provided housing, and is addressed under paragraph 6 above dealing with clauses 8 and 9.

Service of notices

20. **Regulation 17** prescribes the formalities for serving notices required by the legislation.

PART IV: MINISTERIAL DEVELOPMENT REVIEW, EDUCATION AND TRAINING

Ministerial Development Review and continuing ministerial education

21. **Regulation 18** introduces a requirement for a review of each office holder's ministry to be conducted on at least one occasion in each period of two years by a person nominated by the bishop or archbishop. A written record of the outcome of the review will be agreed and signed by the participants. The Archbishops' Council is developing guidance on the conduct of Ministerial Development Reviews (see paragraphs 48 –54 of Part 1 and Annex 5 of Part 3 of the Report) and bishops and archbishops will be required to have regard to this guidance.
22. **Regulation 19** imposes a duty on archbishops and bishops to ensure as far as reasonably possible that all office holders are afforded opportunities to participate in continuing education and training to promote their ministerial development. Office holders are placed under a corresponding duty to participate in such continuing ministerial education.

Training

23. **Regulation 20** imposes a duty on diocesan bishops to ensure that all office holders in training posts (that is, those who are required to undertake initial ministerial education) are provided with suitable training and given the necessary time off work to undertake it. A corresponding duty is imposed on the office holder to participate in and complete such training.

PART V: TIME OFF WORK, TIME SPENT ON OTHER DUTIES AND SICKNESS

Time off and annual leave

24. **Regulations 21 and 22** give to office holders, for the first time, a legal right to a weekly rest period and to annual leave without loss of stipend. Regulation 21 entitles all office-holders to an uninterrupted rest period of at least 24 hours in every seven days, and, in addition, regulation 22 gives an entitlement to those in full-time posts to at least 36 days' annual leave (excluding any discretionary special leave such as a sabbatical). Provision may be made in the statement of particulars that rest days and annual leave may not be taken on particular days, according to the requirements of the post. In the case of annual leave, it is also permissible to specify days on which leave must be taken.

Regulation 22 also provides for the apportionment of annual leave in the first and final years of an appointment.

Maternity, paternity, parental and adoption leave and time spent on public duties

25. **Regulation 23** entitles office holders to maternity, paternity, parental and adoption leave and time off to care for dependants, in accordance with directions issued by the Archbishops' Council. The Council already issues recommendations which are regularly updated, but these will acquire mandatory force under this regulation. In making directions, the Council is obliged to have regard to the corresponding rights given by law to employees.

26. **Regulation 24** gives office holders the right to spend a reasonable time (assessed with reference to the factors set out in Regulation 24(2)) on public duties, including trade union activities where the union represents the office holder or others of the same description.

27. **Regulation 25** gives an office holder who is pregnant an entitlement to time off for ante-natal care.

28. **Regulation 26** provides that stipendiary office holders will not suffer any loss of stipend on account of taking time off to which they are entitled under regulations 23-25.

Sickness

29. **Regulations 27 and 28** address various issues that arise when an office holder is unable to perform the duties of his or her office as a result of illness.

- Regulation 27(1) and (2) requires a stipendiary office holder to report any period of sick leave amounting to a day or longer, and to produce a medical certificate where he or she has been absent for a continuous period of more than seven days. These requirements are necessary to enable the Church Commissioners to obtain the information that they are obliged to hold in relation to the payment of statutory sick pay under the Social Security Contributions and Benefits Act 1992.
- Regulation 27 (4) and (6) provides for the payment of stipend during periods of absence due to ill-health. Stipend is payable in full during the period of entitlement to statutory

sick pay (currently 28 weeks). Thereafter the position is governed by directions, which the Archbishops' Council is empowered by this regulation to make.

- Regulation 27(3) obliges all office holders to make reasonable endeavours to make arrangements for someone else to perform their duties when they are unwell.
- Regulation 27(5) gives power to a diocesan bishop or archbishop to grant to an office holder who is unable to perform his or her duties because of ill health leave of absence for a period that the bishop or archbishop deems appropriate.
- Regulation 28 gives power to a diocesan bishop or archbishop who has reasonable grounds for concern about an office holder's health to direct that the office holder should undergo a medical examination. This provision replaces the similar power in section 7A of the Incumbents (Vacation of Benefices) Measure 1977.

PART VI: DURATION AND TERMINATION OF APPOINTMENTS AND COMPENSATION

Limited appointments and termination of appointments

30. **Regulation 29** deals with the circumstances in which an office holder under Common Tenure may be given a fixed or limited term appointment.

One of the primary aims of the legislation is to remove the present very different security of tenure enjoyed by those in freehold and non-freehold posts. This regulation sets out particular circumstances in which appointments may be made on a fixed or limited term basis. Only if these circumstances apply may such an appointment be made. They may be summarised as follows:

- the post is created to cover another office holder's authorised absence from work, for example on maternity or long-term sick leave;
- the office holder is over the statutory retirement age for full time stipendiary posts and is occupying a part-time post;
- the office is designated as a training post where the office holder is required to undertake initial ministerial education – that is, typically, a title post;
- the office is designated as a post subject to sponsorship funding, that is, it is dependant wholly or partly on external funds, as described in regulation 29(4);

- the office is designated as a probationary post, which is an appointment intended to facilitate the office holder's return to ministry where that person has not held ecclesiastical office for a year or more, or where he or she has been subject to the capability procedure or disciplinary proceedings;
- the office is created by a bishop's mission order under the draft Dioceses, Pastoral and Mission Measure now under consideration by Synod. That Measure (clause 49(8)) provides that mission orders are to be of limited duration, initially not exceeding 5 years.

Where a fixed or limited term appointment is made in the circumstances described above, it comes to an end on the expiry of the fixed term (subject to any extension of that term) or the occurrence of the limiting event.

Compensation for loss of certain offices

31. **Regulation 30** addresses the issue of compensation for those on Common Tenure who lose their office as a result of pastoral reorganisation. At present priests in charge and other licensed ministers do not receive any compensation in these circumstances. The regulation provides that:

- Where pastoral proposals have reached the initial consultation stage under section 3 of the Pastoral Measure 1983 at the time an appointment is made to the office of archdeacon, incumbent, priest in charge, team vicar or deacon in a team ministry (or at the time when the office holder becomes subject to Common Tenure in respect of an office of this kind that he or she already holds) then, if the proposals might affect the office in question, the office may be designated by the diocesan bishop as being subject to potential pastoral reorganisation;
- If, during the period of designation, the office is abolished under a pastoral scheme or order, the office holder will be entitled to compensation, calculated in accordance with Schedule 4 of the Pastoral Measure 1983 but limited to a maximum of one year's loss of service;
- The designation has effect for a maximum of three years. If, at the end of that period, no pastoral scheme or order affecting the office in question has been made, the designation ceases to have effect. If the office is subsequently abolished by a pastoral scheme or order, the office holder will be entitled to full compensation under Schedule 4 of the Pastoral Measure;
- Any office holder who is not otherwise entitled to compensation under the Pastoral Measure (for example an assistant curate) will also receive compensation limited to one year's loss of service if his or her office is abolished as a result of pastoral organisation.

PART VII: CAPABILITY AND GRIEVANCE PROCEDURES

Capability Procedures

32. **Regulation 31** gives the Archbishops' Council the power to issue directions establishing procedures for assessing the capability of office holders to perform the duties of their office. The procedures must be approved by the General Synod. An illustrative draft of a capability procedure is provided in Annex 3 of Part 3 of this Report.

Grievance Procedures

33. **Regulation 32** gives the Archbishops' Council a similar power to issue procedures for enabling an office holder to seek redress for grievances. An illustrative draft of a grievance procedure is provided in Annex 4 of Part 3 of this Report.
34. The Council is required under both regulations 31 and 32 to endeavour to ensure that the capability and grievance procedures that it issues give office holders at least the equivalent protection that they would have were they governed by the statutory requirements applicable to employees. These statutory provisions at present require that such procedures should follow a three-stage process: a written statement of grounds, a meeting attended by the employee and a mechanism for appeal. The illustrative draft procedures are compatible with these requirements.

PART VIII: UNFAIR DISMISSAL

Rights on unfair dismissal

35. **Regulation 33** gives to an office holder under Common Tenure who is removed from office by a determination under the capability procedure the right to make a claim in an employment tribunal on grounds of unfair dismissal. This right does not extend to office holders who are over the statutory retirement age of 70.
36. An employee is not entitled to claim unfair dismissal unless he or she has been in continuous employment for at least one year. This qualification will not apply to office holders under Common Tenure.
37. Otherwise, for the purposes of the legislation governing claims for unfair dismissal (the Employment Rights Act 1996) any office holder making such a claim shall be treated as if he or she were an employee of the Diocesan Board of Finance or, in the case of office holders in a cathedral, an employee of the Chapter. If a tribunal finds that a dismissal was unfair, it may award compensation or, if practicable, make an order for the office holder to be reinstated in his or her post.

C. DRAFT AMENDING CANON No.29

38. This Canon makes a number of amendments to the existing Canons consequential on the provisions of the draft Measure and Regulations, together with certain unrelated amendments which it was thought opportune to include.
39. **Paragraphs 1-3** amend Canon C12 (Of the licensing of ministers under seal). Paragraph 2 removes the provision that licences to assistant clergy may be granted for a term of years: fixed and limited term appointments will now be governed by Regulation 29. Paragraph 3 repeals the provisions relating revocation of licences, to reflect clause 3 of the draft Measure.
40. **Paragraphs 4-6** amend Canon C25 (Of the residence of priests on their benefice) in order to disapply certain of its provisions to those holding office under Common Tenure and substitute alternative provisions. Paragraph 5 substitutes, for the reference to a house of residence belonging to a benefice, a reference to the parsonage house designated in accordance with clause 6(1)(a) of the draft Measure. Paragraph 6 substitutes for the existing provisions governing absence a reference to the leave provisions in Part V of the draft Regulations.
41. **Paragraph 9** amends Canon D3 (Of the licensing of deaconesses) to disapply the provisions enabling a bishop to license a deaconess for a fixed term, and to revoke her licence summarily, where the deaconess is subject to Common Tenure.
42. **Paragraphs 10-12** amend Canon E6 (Of the licensing of readers). Paragraph 11 disapplies the provisions enabling a bishop to license a reader for a fixed term, and to revoke his or her licence summarily, where the reader is subject to Common Tenure. Paragraph 12 corrects the effect of an error in a previous Amending Canon.
43. **Paragraphs 13 and 14** amend Canon E8 (Of the admission and licensing of lay workers) to disapply the provisions enabling a bishop to license a lay worker for a fixed term, and to revoke his or her licence summarily, where the lay worker is subject to Common Tenure.
44. **Paragraphs 15-17** contain amendments unrelated to the draft terms of service legislation. The amendments in paragraphs 15 and 16 enable a person who holds certain judicial offices (as well as a person who has previously held such an office) to serve as a diocesan chancellor or as a judge of the Arches Court of Canterbury or the Chancery Court of York. Paragraph 17 corrects an erroneous cross-reference in Canon H2.

PART THREE: ANNEX OF SUPPLEMENTARY AND ILLUSTRATIVE MATERIAL

ANNEX 1

MEMBERSHIP AND TERMS OF REFERENCE OF THE TERMS OF SERVICE IMPLEMENTATION GROUP

This Group was set up by the Archbishops' Council in June 2005, after the debate at the February sessions of General Synod on GS 1564, the Review of Clergy Terms of Service: Part two.

The Implementation Group is charged with

- following up the recommendations in that report (taking account of the responses from dioceses and other interested parties both to that report and to the earlier report, GS1527, on the first phase of the work);
- bringing forward legislation based on those recommendations as early as possible in this quinquennium;
- reflecting the recommendations from the Implementation Group's first report (GS1593:the Property Issues Revisited) in the draft legislation that it is preparing.

The membership comprised

The Revd Canon Tim Barker

*The Archdeacon of Berkshire (the Ven Norman Russell)

Dr Clive Dilloway

*The Bishop of Dover (the Rt Revd Stephen Venner) (vice-chair)

*The Revd Prebendary David Houlding

Mr Andrew Howard

*The Revd Canon Dr Judy Hunt

Professor David McClean (chair)

*Anne Sloman

[* = member of the General Synod]

Staff supporting the group were

The Revd Judith Egar

Sir Anthony Hammond

Miss Julia Hudson

The Ven Christopher Lowson (from February 2006)

Mrs Su Morgan

Mr Patrick Shorrocks

Mr Stephen Slack

Mrs Sarah Smith (from May 2006)

HISTORY OF THE DEVELOPMENT OF THE PROPOSALS

Section 23 of the Employment Relations Act 1999

1. In 2002, the Department of Trade and Industry published its discussion document *Employment Status in relation to Statutory Employment Rights*. This discussion document set out proposals for implementing section 23 of the Employment Relations Act 1999, which gave the Government power to confer a number of employment rights on people who are not technically employees, so-called atypical workers. This category includes the overwhelming majority of clergy in the Church of England, who are not employed but hold office in accordance with ecclesiastical law.
2. In response, the Archbishops' Council set up a review group chaired by Professor David McClean with the following terms of reference
 - To review the terms under which the clergy hold office to ensure a proper balance between rights and responsibilities, and clear procedures for resolving disputes which afford full protection against possible injustice; and
 - To consider in this context the future of the freehold and the position of the clergy in relation to statutory employment rights.
 - In the review, to give priority to consideration of the position of clergy without the freehold or employment contracts, and to report on this aspect in 2003 with detailed proposals and a programme for their implementation, the rest of the review to be completed, if possible, in 2004.

The Reports of the Review Group GS 1527 and GS 1564

3. The Group's report on the first phase of its work GS 1527, containing the proposal for Common Tenure for all non-freehold posts and identifying most of the issues eventually addressed in the draft legislation, was welcomed by the General Synod in February 2004. Comments on the first Report were taken into account in framing the Group's second Report, GS 1564, which was debated in February 2005. There was a general acceptance of the principle advocated in that report of applying Common Tenure to freehold posts, but the Synod expressed concern about the proposals for property.

The Property Issues Revisited (GS 1593)

4. Following the debate, the Archbishops' Council set up an Implementation Group to follow up the recommendations in the two reports of the Review Group. The Implementation Group gave careful consideration to the reservations expressed by Synod, and came to the following views. All clergy needed to feel secure in their accommodation, but there was a better way of giving them that security than notional ownership, which in any case only applied to incumbents of benefices. Ownership of the

parsonage house should be subject to the existing rights of incumbents, patrons and PCCs. The existing complex matrix of property law needed to be simplified.

5. Its first report, *The Property Issues Revisited* (GS 1593), the Group recommended that the parsonage house should vest in the Diocesan Parsonages Board with decisions about the houses of parochial clergy no longer being taken by committees with more general finance or property responsibilities; that the legislation should protect the interest of incumbents, PCCs and patrons, and that the vestigial legal estate in the church and churchyard should continue to vest in the incumbent as 'corporation sole'.
6. This report was debated by the Synod in November 2005, and the final voting was decisively in favour of the report in all three Houses.
7. At the July sessions in 2006, the Synod was given *A Progress Report from the Implementation Group* GS 1631 and received a presentation from the Implementation Group's chairman.

**CURRENT DRAFT CAPABILITY PROCEDURE FOR OFFICE HOLDERS ON
COMMON TENURE PROVIDED FOR ILLUSTRATION**

Introductory Note

1. The question of capability in ministry has been a matter of concern to the Church for some time. In the context of general support for the clergy in their ministry – particularly from their bishop – it is now recognized that for the minority who experience difficulties there should be a procedure for the Church to offer support and, where necessary, ultimately to consider whether these clergy are capable of holding office or of continuing in their present office. Although such cases will be rare, they can be damaging both to the minister concerned and to others affected. This procedure has been developed to ensure that there is a just way of proceeding which puts the emphasis first on supporting a minister in the hope that he or she will be able to recover and restore their ministry and, only when recovery proves impossible, to remove the minister from office.
2. The provision of ministry within the diocese is the responsibility of the diocesan bishop and the proper use of this procedure to address inadequate ministry falls within the scope of that responsibility. However, it is expected that the bishop will appoint a suitably competent person to act on his behalf in these matters, particularly in the early stages.

The Procedure

Capability

1. Capability for an office or post is demonstrated by the execution of the duties of that office or post to an accepted minimum standard over a sustained period of time. It is about both what you do and how you do it.
2. In assessing what is an accepted minimum standard the requirements of the office should be taken into account along with the more general requirements of the Canons, the Ordinal, and the Ecclesiastical Offices (Terms of Service) Regulations 200...

Purpose of a capability procedure

3. The great majority of those serving the Church do so to a high standard. However, there are some cases where problems that are not disciplinary in nature arise, and ministers are falling below an accepted minimum standard.
4. The principal concerns of a capability procedure are to help people to improve and to deal with problems of poor performance before they become too serious to be remedied. It is about ensuring that people have been made fully aware of what is required of them. Proper resources need to be made available in order to give people the opportunity –

through training, counselling and other means – to equip themselves to improve their performance (where this is necessary) and to realise their full potential.

5. It is not an opportunity to place additional demands on ministers without appropriate consultation.
6. Having an established procedure helps to promote fairness and consistency in the treatment of individuals. It helps to ensure people know where they stand and what to expect.
7. Lack of capability implies a mismatch between the requirements of the role and the person doing it. Often this mismatch can be avoided by instituting better appointments procedures which seek to test, transparently, the candidate against the requirements of the role; articulating expectations through clearer descriptions of the requirements of the office and entering into regular, sensitive but frank discussion on how work is being done. In some cases, it should be possible to address the mismatch by providing the appropriate training, although this requires a willingness on the part of the office holder concerned to participate in training.

The authority and scope of the procedure

8. The procedure is issued by the Archbishops' Council under the Ecclesiastical Offices (Terms of Service) Regulations 200... and has been approved by the General Synod. This procedure must be followed when dealing with issues of capability in relation to any office holder on Common Tenure.
9. The procedure is intended to deal with capability issues not amounting to misconduct under the Clergy Discipline Measure 2003. If in the course of the capability procedure matters come to light which appear to amount to misconduct, the capability procedure may be suspended so that disciplinary proceedings can be begun. In no circumstances may capability procedures and proceedings under the Clergy Discipline Measure be operated simultaneously.
10. Cases likely to attract the capability procedure need to be distinguished from those in which people are fulfilling the basic requirements of the post, but no more, and are doing 'just well enough'. In such cases, those concerned may well benefit from further development, without any need to institute the formal stages of the capability procedure. The procedure is not intended to be used to pursue trivial matters which are best resolved informally.
11. Capability procedures should thus be seen as addressing problems, which are not disciplinary, but where the requirements of the post are not being met and an improvement is needed. The procedure is likely, therefore, to apply to those few office holders who are not competent, or where the role is being performed but pastoral relationships are breaking down because of, say, an abrasive personality. If an improvement in performance cannot be achieved through the capability procedure,

removal from office is a real possibility, even if this is an outcome that is to be avoided if possible.

Basic principles

12. The procedure is based on the following principles:
 - the procedure should be carried out in a way that is fully in accord with the requirements of natural justice;
 - proper human resource advice should be taken at every stage;
 - there should be a right of appeal at every formal stage;
 - the office holder should have full opportunity to respond to all points made;
 - a panel should be involved at every formal stage, not a single individual;
 - the office holder should have the right to be supported by a friend or union representative; and
 - sufficient notice should be given in advance of any appearance before a panel.
13. Lack of capability is one of the grounds for fair dismissal as far as employment tribunals are concerned. However, the decision to dismiss on this ground must never be the outcome of a single meeting, but only after a series of conversations that have recorded unhappiness with performance, provided evidence of opportunities given to improve and develop, and noted where there was persistent failure to improve. Potential removal from office on capability grounds should never come as a bolt from the blue. Conversations about capability issues should have taken place, not only during the regular discussions of how the role is being done and more general ministerial development discussions, but also on a regular basis as the issues arise. It would be important to provide evidence that removal from office was the last resort, including details of offers of help to enable people to improve their performance.
14. At all stages, it is important to ensure that information is given only to those who need to know, and that those involved realize the need for confidentiality. Breach of confidentiality could undermine the position of the office holder involved.
15. So far as possible, the human resource adviser must be present at each stage of the formal procedure.
16. At all stages, if the office holder concerned wishes to bring a friend or union representative to any meeting, he or she may do so.
17. Where the facts are disputed at any stage of the procedure, the standard of proof should be 'the balance of probabilities' and not 'beyond reasonable doubt'.
18. There is a danger of inferring lack of capability where an office holder's cultural upbringing is different from that of the majority around him or her. This may be particularly acute where the office holder has a different ethnic background, and will require those operating the procedure to be fully aware of what those differences could be and how they may best be handled. It may mean managing the expectations of others to

become more realistic, or sensitively pointing out to an office holder how his or her behaviour or style could be moderated to avoid misunderstandings.

19. Ministerial Development Review is a requirement under the Clergy Terms of Service Regulations. This review is the regular opportunity for discussing with a minister his or her well-being, and development; and for adjusting and clarifying the expectations of the role. It is about ministerial development and opportunities for continuing ministerial education and is not a vehicle for dealing with capability issues. That said, it would be open to question whether the procedure had been properly followed if the written record of the Ministerial Development Review did not provide evidence that issues about performance and the need to improve had been raised with the office holder.

Establishing whether there is a capability issue

20. The bishop shall appoint someone ('the appointed person') to handle a capability procedure, especially in its early stages. It will usually be the archdeacon unless the bishop has good reason for determining otherwise.
21. Any report that appears to raise issues of capability should be referred initially to the appointed person. The appointed person may also raise the issue him or herself.
22. When the appointed person is made aware of a potential capability matter, he or she should ensure that appropriate investigations are made to establish whether there is a capability issue and that written records are kept for later reference.
23. It may be appropriate to seek guidance from the human resource adviser at this stage.
24. The appointed person will collect information about the issue(s); frivolous and unsubstantiated reports should be weeded out at this point. If the person reporting the alleged capability problem is not prepared to be put on record or participate in the procedure, the appointed person should take the matter no further. If the matter concerns a parochial office holder and the person reporting it is not one of the churchwardens, the appointed person may discuss the matter with the churchwardens, and ensure that both the person reporting the issue and the office holder are informed about the results of the conversation.
25. The matters which prompted the original concerns or report will be considered alongside other information (which may include the results of Ministerial Development Reviews) to help provide a picture of the alleged problems. While some cases might be fairly clear-cut, others may be more difficult to discern, and might require a sustained accumulation of information. The incidents may be small in themselves, but may represent part of a cumulative and persistent pattern of behaviour or ways of doing things that prevents the person from fulfilling the requirements of the post.

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24. The appointed person will collect information about the issue(s); frivolous and unsubstantiated reports should be weeded out at this point. If the person reporting the alleged capability problem is not prepared to be put on record or participate in the procedure, the appointed person should take the matter no further. If the matter concerns a parochial office holder and the person reporting it is not one of the churchwardens, the appointed person may discuss the matter with the churchwardens, and ensure that both the person reporting the issue and the office holder are informed about the results of the conversation.
25. The matters which prompted the original concerns or report will be considered alongside other information (which may include the results of Ministerial Development Reviews) to help provide a picture of the alleged problems. While some cases might be fairly clear-cut, others may be more difficult to discern, and might require a sustained accumulation of information. The incidents may be small in themselves, but may represent part of a cumulative and persistent pattern of behaviour or ways of doing things that prevents the person from fulfilling the requirements of the post.

Meeting with the office holder

26. If the appointed person decides to take the matter further, he or she, in collaboration with the human resource adviser, should arrange a meeting with the office holder; alerting him or her in advance to the concerns raised, and giving at least 10 days' notice of the meeting.
27. At the meeting, the appointed person reviews the issues with the office holder. In assessing whether there is a capability issue, the appointed person should take account of the office holder's strengths and gifts and remember that it is not possible to be good at everything.
28. One outcome may be that, after the facts have been gathered and considered, a complaint or concern is found to be unjustified or trivial. It may also prove to have been a one-off occasion, and thus there may be no capability problems. Another outcome may be that the expectations surrounding the role and the office holder are unrealistic. In this situation it will be necessary to examine the role description, in order to check whether it is realistic or whether it needs revision in the light of changing circumstances.
29. If there is a capability issue, the appointed person should
 - explore with the office holder any contributory factors (such as domestic circumstances);
 - explore what can be offered to the office holder to assist in improving performance (for example, training, mediation, or a period of leave);
 - seek to agree with the office holder a form of action to improve performance; and
 - set a date for reviewing progress.
30. If the matter is the result of reports from others, they will be told that action is being taken, that improvement is expected, and that he or she will be asked to comment on this at a later stage. If no further action is required, the appointed person informs the office holder and those who raised the problem in writing that no further action will be taken.
31. After the agreed interval, the appointed person, with the collaboration of the human resource adviser, reviews with the office holder and those who have reported the problems whether improvement has taken place as hoped. If this review does not include the churchwardens, the appointed person may take their advice. (Any separate conversations with those who raised the matter or with churchwardens must be reported to the office holder.)

Informal Warning

32. If the appointed person, as a result of a lack of improvement in the office holder's performance, decides to issue an informal warning, he or she does so in writing indicating that performance will be monitored over a specified period and that, if there is a failure to improve, the formal stage may be commenced; a copy of the letter will be put on the

office holder's personal file. The person(s) who reported the matter and others as appropriate may be asked to assist in the monitoring process.

33. At the end of the set period, the appointed person gathers information from the appropriate people and from the office holder and then decides whether or not there has been sufficient improvement and whether or not to move to the formal stage of the procedure. If the improvement has taken place, the appointed person writes to the office holder confirming this.
34. If informal action does not bring about an improvement, or the unsatisfactory performance is considered to be too serious to be classed as minor, the appointed person will recommend to the responsible bishop that the office holder be given a clear signal of the bishop's concern by the taking of formal action.

Formal procedure stage one - first formal warning

35. The first step in any formal process is to let the office holder know in writing the nature of the alleged incapability, why it is not acceptable and invite them to a meeting to discuss the matter.
36. The appointed person, after taking advice from the human resource adviser, will write to the office holder requiring him or her to attend a meeting with a capability panel (for membership, see the Annex), giving at least 10 days' notice and providing: information about the alleged incapability including copies of any documents which will be produced at the meeting; details of the members of the panel; and inviting the office holder to bring a friend or trade union representative. Anyone who has reported the capability problem and, as appropriate, the churchwardens or others who have been involved in monitoring the situation, might be invited to attend to provide information.
37. Where possible, the timing and location of the meeting should be agreed with the office holder. The meeting should be held in a private location with no interruptions.
38. An office holder who cannot attend a meeting should inform the appointed person in advance whenever possible. If the office holder fails to attend through circumstances outside his or her control and unforeseeable at the time the meeting was arranged (e.g. illness) the appointed person should arrange another meeting. A decision may be taken in the office holder's absence if the office holder fails to attend the re-arranged meeting without good reason. If an office holder's friend or trade union representative cannot attend on a proposed date, the office holder can suggest another date, so long as it is reasonable and is no more than seven calendar days after the date originally proposed by the appointed person. This seven-day limit may be extended by mutual agreement.
39. At the meeting, the appointed person will explain the nature of the issues to the office holder and go through the information that has been gathered.
40. The office holder will have the opportunity to set out his or her case and answer any allegations that have been made. The office holder should also be allowed to ask

questions, present information, call others to do so and be given an opportunity to raise points about any information provided by others.

41. The office holder's friend or trade union representative may ask questions and make representations; they may not answer questions on behalf of the office holder.
42. The members of the panel may themselves ask questions.
43. Following the meeting the capability panel must decide whether a formal warning is justified or not. Before making any decision, the panel should take account of:
 - the office holder's general record;
 - the office holder's length of service;
 - actions taken in any previous similar case;
 - the explanations given by the office holder; and
 - (most important of all) whether the intended action is reasonable under the circumstances.
44. Notice of the result of the meeting should be given by the appointed person to the office holder within 7 days of the meeting. If the panel decides that no action is justified, the office holder should be informed. If the panel decides that a formal warning should be given, the appointed person writes to the office holder notifying him or her of this, setting out:
 - the performance problem;
 - the improvement that is required;
 - the timescale for achieving this improvement (normally not less than 3 months);
 - the review date; and
 - any support that will be given to assist the office holder.
45. The office holder should be informed that the notification represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately to removal from office. The office holder should be informed of the right to appeal and how to exercise this. A copy of the appointed person's letter should be kept and used as the basis for monitoring and reviewing performance over the specified period and the responsible bishop informed in writing.

Formal procedure – stage two: final formal warning

46. At the end of the set period given in the first formal warning, the appointed person again gathers information as appropriate from those who have reported problems with the office holder's capability and others and from the office holder. The appointed person may decide that improvement has taken place; or that it is necessary to move to the next stage; and will so inform the responsible bishop.
47. Within 14 days of the end of the period set for improvement in the first written warning the appointed person will write to the office holder either that improved performance means that the capability procedure is being discontinued; or setting out the continued performance problem which leads him or her to continue to question the capability of the

office holder, and inviting the office holder to a meeting with a second capability panel to discuss the matter, giving at least 10 days' notice.

48. The same procedure is followed to that for a first formal panel meeting described above. Notice of the result of the meeting should be given to the office holder within 7 days of the meeting. If the capability panel agrees that a final formal warning should be given, the diocesan bishop, who chairs the panel, writes to the office holder with a final formal warning, which he or she is told will be placed on the personal file, and informs the office holder that if there is no satisfactory improvement within a specified time period (normally not less than 3 months), the outcome may be removal from office. The letter should refer to the right to appeal and how to exercise it. Where the diocesan bishop considers it appropriate, he may nominate a bishop from a different diocese to act on his behalf if he has been involved at an earlier stage.

Formal procedure – stage three: removal from office

49. If the responsible bishop considers that the required improvement has not taken place, he writes to the office holder requiring him or her to attend a formal hearing of the final capability panel, and notifying him or her that he or she has failed to meet required standards and that removal from office is being proposed. The office holder is given the opportunity of making a representation to the panel as to why he or she should not be removed from office.
50. If the panel decides to remove the office holder from office, the diocesan bishop must inform the office holder that he or she has the right to appeal within 7 calendar days of receiving the results of the panel. If the appeal is unsuccessful, or the time for making an appeal expires without an appeal being brought, the bishop must serve notice in writing on the office holder terminating his or her appointment with effect from the date of the expiry of three months after the date of the notice and stating in the notice the reason for the termination.

Dealing with absence

51. When dealing with absence from work, it is important to establish why the office holder has been absent. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter under the Clergy Discipline Measure 2003.

Incapability due to illness

52. If the absence is due to genuine (including medically certified) illness, the issue becomes one of capability, and the appointed person should take a sympathetic and considerate approach. When thinking about how to handle these cases it is helpful to consider:-
- how soon the office holder's health and attendance will improve;
 - whether alternative work outside the Church is available and what support might be required to enable the office holder to obtain such work;
 - the effect of the absence on the parish or other area of ministry;

- how similar situations have been handled in the past; and
 - whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.
53. In cases of extended sick leave, both statutory and terms of service issues will need to be addressed and specialist advice may be required.
54. If the appointed person considers that poor performance may be the result of physical or mental illness, the issues need to be treated with sensitivity and care. The office-holder should be encouraged to seek professional advice: the Regulations contain a power for the bishop to direct an office-holder to undergo a medical examination where he has reasonable concerns about that person's health. There is also a power to grant special leave of absence in such circumstances.
55. An office-holder will be regarded as disabled within the meaning of the Disability Discrimination Act 1995 if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on his or her ability to carry out normal daily activities. Some chronic conditions automatically qualify as disabilities under the Act, whatever the state of the person's health at any particular time. The Act requires reasonable adjustments to be made to facilitate the disabled person's return to work, which can include changing particular duties of the post, retraining for different duties or allowing time off for rehabilitation.
56. It may sometimes be appropriate to make reasonable adjustments in cases where this is not specifically required by the Disability Discrimination Act.
57. In some cases, capability issues may remain, even though all reasonable adjustments have been made. If medical advice has indicated that the condition is likely to be permanent, it may be possible to deal with the situation through ill health retirement.
58. In cases where the Church of England Pensions Board is satisfied that a disability is likely to be permanent, a disability pension and lump sum may be available to qualifying members of the pensions scheme on leaving office. However, if the office holder refuses to accept the position and remains in denial about their state of health and their ability to carry out the duties of the post, it may be necessary to activate the capability procedure (possibly in shortened form: see the section on the shortened version).

Appeals

59. The office holder has the right to appeal against a capability panel's decision to an appeal panel. None of those on the original capability panel may serve on the appeal panel, although the appeal panel may ask members of the original panel to appear before it or provide information in writing.

60. If the office holder wishes to appeal, he or she must notify the appointed person within 7 days of receiving the results of the relevant panel meeting.
61. An office holder may chose to appeal on the ground that
 - a panel's decision was unfair;
 - fresh information has come to light;
 - the capability process was not used correctly.

Keeping records

62. It is important, and in the interest of all parties, to keep written records during the capability procedure. Records should include:
 - the concerns raised about the office holder's capability;
 - the office holder's response;
 - findings made and actions taken;
 - the reasons for actions taken;
 - whether an appeal was lodged;
 - the outcome of the appeal; and
 - subsequent developments.
63. Records should be treated as confidential.
64. Copies of meeting records should be given to the office holder, including copies of any formal minutes that have been taken. In certain circumstances (for example to protect a person supplying information) some information may be withheld.
65. At the point when any warning ceases to be in effect, the records relating to the capability proceedings should be placed in a sealed envelope on the office holder's personal file.

Access to an Employment Tribunal

66. Office holders who are removed from office following the capability procedure have the right to take matters to an Employment Tribunal.

After removal from office

67. Where the final capability panel considers that the office holder is unsuitable for his or her current position, and should be removed from it, but may be able to meet the requirements of other posts, the panel may encourage the office holder to seek advice from the Clergy Appointments Adviser and the human resource adviser in obtaining a new post.

Membership of the panels

68. Details of the composition of the panels are given in the table in the annex. The office holder has the right to object to membership of the panel, but only on the grounds of alleged partiality. Those involved in dealing with capability procedures should have

appropriate training and be aware of people's cultural differences (particularly those relating to ethnicity), which, in some circumstances, could lead to wrong assumptions.

69. Membership of the capability panel may be the same at each stage but no member of the capability panel may sit on the appeal panel. Where necessary, for example because of illness or a member of the panel moving on to another diocese, the appointed person may ask a substitute of equal standing to serve.
70. A panel's decision may be reached by a majority of two out of three panel members (or, where there are four members on the panel, three out of four).

Use of a shortened procedure

71. There will be exceptional types of cases in which the procedure can be shortened, but the principles of natural justice and the opportunity to appeal against removal from office must not be jeopardised. They will include the following.
 - (a) Cases where immediate improvement can be expected, through an easily acquired alternative pattern of behaviour or action likely to produce immediate effects. If the expected improvement does not occur, and there are no mitigating circumstances such as ill health or personal difficulties, the procedure could move through each stage fairly quickly.
 - (b) Cases arising during the first year of an office holder's tenure in any post or during the first three years of a title post, where it becomes clear that he or she is not suited to the post and so not capable of undertaking what is required. In the case of assistant curates, it will be important to bear in mind that they are still in a learning role, and that allowance for this needs to be made before the formal procedure is activated.
72. In these very particular cases, the appointed person, with advice from the human resource adviser, may decide that a shortened procedure should be used. Only one stage of the procedure may be dropped. That is, there must always be an informal warning stage and a formal warning stage with appeal rights, prior to holding a final capability meeting that might result in removal from office.

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Annex - Membership of panels to hear cases and appeals

Office holder	Parochial and cathedral clergy (except Dean), including NSMs, OLMs, (stipendiary) readers and other licensed clergy	Dean or Archdeacon	Bishop	Archbishop
Informal Warning	Normally <i>Appointed Person</i> but Suffragan Bishop or Dean if Appointed person unable to act	Diocesan Bishop	Archbishop	The senior bishop in the other province
First Formal Warning	<i>Appointed Person</i> (or Suffragan Bishop or Dean) with 1 cleric ¹ and 1 layperson ¹	Diocesan Bishop with 1 cleric ¹ and 1 layperson ¹	Archbishop with 1 cleric ³ and 1 layperson ²	The senior bishop in the other province with 1 cleric ⁴ and 1 layperson from the other province ⁴
Appeal	<i>Appointed Person</i> (or Suffragan Bishop or Dean) not involved with first formal warning, with Chair of Diocesan House of Clergy and Chair of Diocesan House of Laity.	Other Diocesan Bishop ³ With 1 cleric ² and 1 layperson ²	Other Archbishop with 1 cleric ³ And 1 layperson ³	The Other Archbishop with 1 cleric ⁴ and 1 layperson from the other province ⁴
Final Formal Warning	Diocesan Bishop with <i>Appointed Person</i> (or Suffragan Bishop or Dean), 1 cleric ¹ and 1 layperson ¹	Diocesan Bishop with 1 cleric ¹ and 1 layperson ¹	Archbishop with 1 cleric ³ and 1 layperson ³	The senior bishop in the other province with 1 cleric ⁴ and 1 layperson from the other province ⁴
Appeal	<i>Appointed Person</i> (or Suffragan Bishop or Dean) not involved with first formal warning, with Chair of Diocesan House of Clergy and Chair of Diocesan House of Laity	Other Diocesan Bishop ³ with 1 cleric ² and 1 layperson ²	Other Archbishop with 1 cleric ⁴ and 1 layperson ⁴	The Other Archbishop with 1 cleric ⁴ and 1 layperson from the other province ⁴

Final capability panel	Diocesan Bishop with <i>Appointed Person</i> (or Suffragan Bishop or Dean) and 1 cleric ³ and 1 layperson ³	Diocesan Bishop with 1 cleric ³ and 1 layperson ³	Archbishop with 1 cleric ³ , 1 layperson ³ , and Prolocutor of the Province	Other Archbishop with 1 cleric ⁴ and 1 layperson ⁴ from the other province and Prolocutor of the Province
Appeal	Diocesan Bishop ³ with 1 cleric ² and 1 layperson ²	Other Diocesan Bishop ³ with Suffragan Bishop ³ and 1 layperson ²	Other Archbishop with Prolocutor of other Province, Vicar General of the other Province and the Chair of General Synod House of Laity	Dean of the Arches, a senior bishop nominated by the Dean, the Prolocutor of the other Province and the Chair of the General Synod House of Laity

¹ Nominated from another parish by the Diocesan Bishop

² Nominated from another diocese by another Diocesan Bishop

³ From another diocese nominated by the Archbishop of the Province (the Vicar General where the complaint is against a priest in the Diocese of Canterbury or York)

⁴ From another diocese appointed by the other Archbishop.

Membership of the panel can be the same at each stage of the procedure but the membership of the appeal panel *must* be different from that of the original panel. In each case, the first person mentioned will chair the panel. If a named office-holder (e.g. a Chair or Prolocutor) is unable to act, he or she will nominate a substitute

**CURRENT DRAFT OF THE GRIEVANCE PROCEDURE PROVIDED FOR
ILLUSTRATION**

Introduction

- 1.1 People need to feel confident there is a way of raising their concerns that is confidential and fair. The aim of this procedure is:
 - to respond to grievances fairly, quickly and as near as possible to the point of origin;
 - to ensure the focus is on the issues rather than personalities;
 - to take account of the legitimate interests of all concerned;
 - to allow grievances to be pursued without fear of sanction.
- 1.2 Any grievance should be treated seriously because of its significance to the person concerned. In addition, no one should be disadvantaged, for example in relation to new appointments or access to training, by bringing a grievance or by acting as a 'friend' to someone who has brought a grievance.
- 1.3 Sometimes, despite everyone's best efforts, a grievance may remain unresolved. In such cases it may be possible to acknowledge that and move on to reconciliation.
- 1.4 It is central to the teaching of Jesus that those who are reconciled to God must be open to being reconciled to those who have offended them or those they have offended. Reconciliation involves clarification of what has happened, how it is perceived by the other person and acknowledgement of the depth of anger and hurt. Reconciliation, for both parties, involves the rebuilding of damaged relationships.

Scope

- 2.1 This Grievance Procedure is available to all office holders under Common Tenure.
- 2.2 The Procedure is intended to give an opportunity to raise grievances relating to the exercise of the office held, which may include issues relating to:
 - the interpretation and application of terms and conditions of service;
 - housing;
 - Ministerial Development Reviews;
 - continuing ministerial education; and
 - (in the case of training posts) provision of suitable training and experience or an assessment at the end of the training that the cleric was not suitable for a post of responsibility.
- 2.3 Allegations concerning misconduct, bullying, harassment or discriminatory treatment by a third party are addressed in section 5 of this document.

- 2.4 The Procedure may not be used where other forms of appeal or representation are available, for example appeals against disciplinary decisions or those taken in the faculty jurisdiction, rights of objection in respect of proposals for certain housing transactions or for pastoral reorganisation, and applications to Employment Tribunals in certain cases provided for in the Ecclesiastical Offices (Terms of Service) Regulations 200*. Grievances concerned with work under a contract of employment (with an outside body such as the National Health or Prison Service or a college, or with the Diocesan Board of Finance) should be dealt with under the grievance procedures of the relevant employing body.

Informal resolution

- 3.1 Attempts should always be made to resolve matters by informal approaches. An office holder should in the first instance discuss his or her grievance with the person responsible for the matters which have given rise to concerns, for example the relevant diocesan officer or the incumbent or team rector. If this is not appropriate or is unsuccessful, the office holder should raise the matter with the rural or area dean, with the person responsible for his or her Ministerial Development Review or with another suitable person, in order to explore whether and how the matter might be resolved informally.

The Formal Procedure

- 4.1 If an informal approach proves incapable of resolving the grievance then the formal Grievance Procedure set out below may be invoked by the office holder.

Stage one

- 4.2 The office holder must set out the grievance in writing, including details of any informal steps that have been taken to try and resolve the matter, and send the statement to the archdeacon (unless the archdeacon is directly concerned, in which case the matter should be referred to the diocesan bishop).

Stage two

- 4.3 In certain cases, the archdeacon or diocesan bishop may feel that the matter can be more appropriately handled by some other person (for example the person who chairs the Diocesan Parsonages Board or a suffragan or area bishop) and may, after consulting the office holder, refer the matter accordingly. In the following sections of this document, references to 'the archdeacon' include any other person dealing with the matter.
- 4.4 The archdeacon shall make appropriate enquiries into the matters raised in the statement of grievance and invite the office holder to attend a meeting to discuss the grievance. An office holder has the right to be accompanied at the meeting as described in section 6 below.
- 4.5 If the grievance is directed at a particular person or body, that person or body should be invited to express a view, and that view must be taken into account at the meeting.

- 4.6 As soon as possible, and not more than 14 days after the meeting, the archdeacon shall inform the office holder in writing of his or her decision as to whether there is substance in the matters raised in the statement of grievance and, if so, what steps he or she has taken, is taking or proposes to take to resolve the matter.
- 4.7 The archdeacon shall at the same time notify the office holder of the office holder's right to take the matter to stage 3 if the office holder is dissatisfied with the decision or if the matter is not resolved.

Stage three

- 4.8 An office holder wishing to move to this stage of the Procedure shall inform the archdeacon in writing, stating his or her reasons for wishing to do so. The archdeacon shall refer the matter to a senior member of the clergy (a bishop, the dean of the cathedral, or another archdeacon) or to a small group including one such person. The office holder shall be invited to attend a meeting with that person or group to discuss the grievance. An office holder has the right to be accompanied at the meeting as described in section 6 below.
- 4.9 As soon as possible, and not more than 14 days after the meeting, the office holder shall be informed in writing of the decision as to what steps or further steps have been, are being, or are proposed to be taken to resolve the matter.

Allegations against third parties

- 5.1 Where the grievance involves the alleged actions of a third party, whether an individual or a body it is necessary to ensure that the third party has the opportunity to express a view and that that view is taken into account. If an informal approach proves incapable of resolving the grievance, the Formal Procedure set out above may be invoked by the office holder.

Allegations of bullying

- 5.2 Where the grievance involves the alleged bullying by a third party, and the diocese has an anti-bullying and harassment policy, this will set out informal steps which the office holder can take before making a formal complaint. If an informal approach proves incapable of resolving the grievance, the Formal Procedure set out above may be invoked by the office holder.
- 5.3 On receiving a formal complaint of such a grievance the archdeacon shall consider whether the allegation appears to be one of misconduct within section 8 of the Clergy Discipline Measure 2003 (for example serious bullying by a member of the clergy). If it does so appear, he or she shall rule that the matter may be dealt with only in accordance with that Measure. If it does not so appear (for example, where the bullying is being carried out by a lay person, who is not subject to the Clergy Discipline Measure, or where

it is not bullying) the archdeacon shall seek the permission of the office holder before discussing the matter with the third party. The third party is entitled to be accompanied at any meeting to discuss the allegations as described in section 6 below. This section is equally applicable at the further stage of the Procedure.

Right to be accompanied

- 6.1 Office holders and third parties have the right to be accompanied at all meetings concerning the grievance by a friend or a colleague or a trade union official.

Keeping records

- 7.1 It is important, and in the interests of all parties, to keep written records during the grievance process. Records should include:
- the nature of the grievance raised;
 - a copy of the written statement of grievance;
 - the archdeacon's decisions and the actions;
 - whether the matter was taken to the further stage and if so the outcome; and
 - subsequent developments.
- 7.2 Records should be treated as confidential and kept securely.

January 2007

ANNEX 5

CURRENT DRAFT GUIDELINES FOR MINISTERIAL DEVELOPMENT REVIEW PROVIDED FOR ILLUSTRATION

Introduction

1. These guidelines recognise:
 - the responsibility of the Church to assist in developing the skills, talents and abilities of those who have been selected and trained for the ministry so they are better able to meet the demands of ministry today and in the future;
 - the relationship between the bishop and his clergy and their shared cure of souls;
 - that clergy are called to be deacons or priests but they are appointed to exercise particular offices;
 - that bishops, clergy and those they serve are accountable to each other;
 - that clergy should have protection from unreasonable expectations;
 - that ministry takes place in different contexts;
 - that clergy should be free to exercise their ministry in a way that is sometimes prophetic.

MINISTERIAL DEVELOPMENT REVIEW GUIDELINES

1. Ministerial Development Review (MDR) gives expression to theological principles which underpin relationships and behaviour within the Church as the Body of Christ.
2. There is already much good practice in dioceses. These guidelines are intended to build on this by ensuring consistent and good practice and ensure that clergy moving from one diocese to another experience some continuity of review. These guidelines will be a minimum requirement.
3. MDR is an opportunity for the priest or deacon concerned, 'the reviewee', to reflect on the period since the previous review and to identify objectives and development needs for the future. It takes place in the context of the particular ministry of each participant, their CME needs and any diocesan strategic plans. It assists dioceses to plan relevant and effective CME.
4. MDR is episcopally led. The bishop may wish to delegate some of his functions in this area to others.
5. The bishop is responsible for ensuring that MDR is provided in his diocese. Dioceses may wish to devise their own schemes which must, however, be in accordance with these guidelines as amended from time to time by the House of Bishops. The sample schemes which have been made available accord with these guidelines and are offered for use by dioceses.

6. All clergy on common tenure are required to participate in MDR. It is good practice for MDR to be offered to all clergy. Special factors apply in some cases:
 - (a) Particular care will be required in cases in which clergy hold two different appointments with responsibilities in different fields to ensure clarity about the review procedure and who is to conduct it. These matters should be agreed as part of the conditions of service on appointment and reviewed when circumstances change.
 - (b) Any minister with a contract of employment (e.g., a sector minister) is likely to be covered by his or her employer's scheme; a person employed by an outside body but licensed by the bishop will normally be within the MDR scheme in respect of the licence.
 - (c) Clergy in their title post are subject to review as part of their on-going training. They may benefit from participating in full MDR in their final year of IME4-7.
 - (d) There is a special scheme for bishops.
7. It is recommended that some form of review take place every year but MDR in accordance with these guidelines must be carried out not less than once every two years. Within that framework, bishops may wish to implement a review cycle in their diocese with different forms of review in alternate years. Interim review may be carried out as part of the induction process on moving post or assuming additional responsibilities.
8. It is for the bishop to decide who will conduct reviews in his diocese. He will appoint reviewers and ensure that they are trained and continue to meet the required standard. The bishop will decide whether he wishes to conduct reviews himself. In most dioceses he is unlikely to be able to conduct all reviews himself but is likely to want to conduct the reviews of his senior clergy.
9. MDR will be conducted on a one-to-one basis. The bishop will ensure appropriate pairings of reviewers and reviewees and will direct how this is to be done in his diocese. The reviewer will need to be able to take an objective view. The reviewer will need to be conversant with the bishop's vision and expectations of his clergy in general and this parish/group of parishes/area of ministry in particular. The reviewer will need to be authorised to agree personal objectives with the reviewee, bearing in mind parish and diocesan objectives and strategy. If the reviewee has no input into the choice of reviewer there will be a right to make a reasoned objection.
10. The MDR is expected to be searching and requires both the reviewer and the reviewee to prepare beforehand.
11. Before the review takes place comments will be sought from a representative range of others who have knowledge of the reviewee's ministry including lay representatives in the parish/area of ministry and these comments will be recorded. Depending on local arrangements, these may be collected by the reviewee or by a designated MDR

administrator. The reviewee has the right to suggest the names of some who should be approached for comment and has a right to object to any of those suggested by the bishop or reviewer. Any difference of opinion or exercise of the right of veto should be formally noted.

12. MDR needs to recognise the context in which the reviewee is ministering. It is recommended that prior to the first MDR in a new post, or following introduction of the scheme, a statement is prepared setting out the basic facts of the parish or focus of ministry. This should be reviewed and updated by the reviewee if necessary before the MDR each year. Existing role descriptions and statements of expectations should also be reviewed and updated if necessary at the MDR each year. Input from others may be required.
13. The MDR will include an assessment of how far past objectives or priorities have been met or refined and how fruitful they have been in the life of the parish/benefice/area of ministry and of the participant. This will help to identify whether the objectives were useful, realistic and achievable and whether some form of additional help or support is needed. Some objectives will be long-term and the fact that little progress has been made in reaching such an objective in one particular period should not necessarily be seen as failure on the part of the reviewee: it may prompt reflection and perhaps re-statement of the objectives.
14. Following prayerful reflection before the MDR and within the light of discussions within the MDR, fresh objectives or priorities for the forthcoming period will be agreed. These should include both personal development objectives and ministry-focussed objectives. It is recommended that normally no more than six should be agreed - three of each. They should be flexible. If achieved during the period further objectives should be set. It may be that the same objective will occur over several years. Longer term development and ministry objectives may also need to be considered. Ministry focussed objectives will normally need to be shared with and owned by those with a part in the relevant ministry, e.g. the churchwardens or PCC.
15. A written summary of the MDR will be made by the reviewee or the reviewer. The minimum information to be recorded will be:
 - Date;
 - Reviewer, reviewee;
 - Review of past objectives or priorities and completion / movement towards them;
 - New objectives or priorities;
 - Relations with others;
 - CME needs;
 - Summary of input from lay people and reviewee's response to this;
 - Anything else the reviewee would like to mention.

The reviewee and the reviewer will each have the opportunity to note any areas of disagreement. Copies of the MDR summary will be kept by the reviewee and the bishop. The bishop will arrange for a copy to be placed on the reviewee's blue file (the file held

by the bishop and which is passed when there is any change of diocese) and for a note of the development needs to be passed to the CME officer.

16. The primary responsibility for follow-up action after MDR lies with the reviewee and the bishop. The bishop may delegate aspects of follow-up to designated officers in the diocese but ultimately the responsibility is his.
17. MDR is part of the pastoral care a bishop gives to the clergy and does not preclude time being requested and given on specific pastoral matters or for advice about a move.

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