

GENERAL SYNOD

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

REVISION COMMITTEE REPORT

- Chair:** Mr Geoffrey Tattersall QC (Manchester)
- Ex-officio members
(Steering Committee):** The Right Reverend Stephen Venner (the Bishop of
Dover) (Ex-officio) (Chair)
Mrs April Alexander (Southwark)
The Venerable Christine Allsopp, the Archdeacon of Northampton
(Peterborough)
The Reverend Canon Clive Hawkins (Winchester)
The Reverend Prebendary David Houlding (London)
Mrs Anne Sloman (Ex-officio)
- Appointed members:** The Reverend Paul Ayers (Bradford)
The Reverend Canon Robert Cotton (Guildford)
The Reverend Canon David Felix (Chester)
Mrs Mary Johnston (London)
The Reverend Canon Simon Killwick (Manchester)
The Venerable Alistair Magowan, the Archdeacon of Dorset (Salisbury)
Canon Harry Marsh (Chelmsford)
- Consultants**
- Diocesan Secretaries:** Mr Robert Higham (Worcester)
- Diocesan Registrars:** Mr Owen Carew-Jones (Rochester)
Mr Nick Richens (Deputy Registrar, Guildford)
- Church Commissioners:** Miss Sue Jones (Official Solicitor)
Mr Mike Webster
- Human Resources:** Mrs Su Morgan (Director of Human Resources)
Julia Hudson
Mr Patrick Shorrocks
- Ministry Division:** The Venerable Christopher Lowson (Director of Ministry Division)
Mrs Sarah Smith (DRACSC Secretary)
- Former Chair of Review
Group:** Professor David McClean

Staff

Legal Advisers: Mr Stephen Slack
The Reverend Judith Egar

Standing Counsel: Sir Anthony Hammond QC

Secretary: Mr Robert Wellen (to June 2007)
Mr Howard Cattermole (from September 2007)

1. The draft Ecclesiastical Offices (Terms of Service) Measure (“the draft Measure”), draft Ecclesiastical Offices (Terms of Service) Regulations (“the draft Regulations”) and draft Amending Canon No. 29 (“the draft Canon”) (collectively “the draft legislation”) all received First Consideration from the General Synod (“the Synod”) at the February 2007 Group of Sessions. The Business Committee determined in accordance with Standing Order 68(a) that the draft Regulations should be considered in accordance with the provisions of the Standing Orders relating to Measures. The period for the submission of proposals for amendment under Standing Order 53(a) expired on 2nd April 2007.
2. In addition to proposals from the Steering Committee, and from individual members of the Revision Committee (“the Committee”), proposals for amendment submitted in accordance with Standing Order 53(a) were received from those members of Synod listed in Part 1 of Appendix I. Submissions were also received from those non-Synod members or bodies listed in Part 2 of Appendix I. The Committee considered all these submissions. All those who attended and addressed the Committee are indicated in Appendix I.
3. The Committee met for nine full-day meetings between May and December 2007. The meetings were structured in such a way that the Committee was able to concentrate exclusively on the sensitive issues relating to parsonage houses over two meetings on successive days in September. This enabled the Committee to hear a number of oral submissions and to have a thorough and wide-ranging discussion before taking a view. All the Committee’s decisions were agreed *nem con*, except where otherwise indicated.
4. The amendments agreed by the Committee to give effect to the proposals that it accepted are shown in the versions of the draft Measure, draft Regulations and draft Canon (GS 1697A-99A) now before the Synod. As required by Standing Order 54(b), Appendix II contains a summary of the proposals received which raise points of substance and the Committee’s consideration of them. Appendix III contains a destination table relating the provisions of the draft legislation at First Consideration to those in the draft legislation now returned to the Synod.
5. At First Consideration the Synod had sight, for illustrative purposes only, of a preliminary draft capability procedure, grievance procedure and guiding principles for ministerial development review (“MDR”). Work on these documents and other non-statutory material related to the legislation has continued under the auspices of an Implementation Panel (“the Panel”) established by the Archbishops’ Council as a sub-group of the Deployment Remuneration and Conditions of Service Committee and chaired by the Bishop of Hull. Submissions received by the Committee which related to the content of this material were referred to the Panel, which also heard oral representations from Synod members and others. The Committee received a report from the Panel with further illustrative drafts of the capability and grievance procedures and the MDR guidelines, and this informed the Committee’s consideration of the related provisions of the draft legislation. The further drafts are contained in Appendix IV, and are **for information only** at this stage. A

background note has also been provided by the Panel (GS Misc 874). Once the Regulations are in force, it will be for the Archbishops' Council to bring to Synod for approval final versions of the capability and grievance procedures and also to issue the MDR guidelines. Members of Synod who wish to raise further comments on these drafts are invited to write to the Secretary of the Panel, Mr Patrick Shorrocks of the Archbishops' Council's Human Resources Department.

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE

Clause 1 – Common Tenure

6. The Committee considered proposals for amendment which sought, in various ways, either to limit or to extend the scope of common tenure. A number of submissions argued that the Measure should not apply to those holding freehold office, at least for the time being. It was suggested that, while the case for strengthening the protection of licensed office holders was clear, the argument for changing the terms on which freeholders hold office had not been made out. The Committee was reminded, however, of the underlying principle established by the Review Group whose work had given rise to this legislation, namely that clergy and stipendiary lay office holders should, so far as practicable, hold office on terms and conditions that were common to all. The Committee rejected the proposals for excluding freeholders from the scope of the Measure, voting one in favour and nine against, with two abstentions. A proposal that freeholders should not be invited to 'opt in' under Clause 1(4) until ten years had elapsed from the introduction of common tenure was also rejected, the Committee seeing no benefit in such a delay.
7. The Committee accepted that team rectors should, in the interests of fairness, be treated in the same way as other incumbents. They therefore agreed that Clause 1(1) should be amended so that team rectors should be afforded the 'opt in' provision in Clause 1(4), rather than becoming automatically subject to common tenure on the date when Clause 1 was brought into force.
8. The Committee rejected a proposal that licensed clergy should be given contracts of employment. Although it was accepted that in law an office holder could also work under a contract, the Committee supported the Review Group's conclusion that it was difficult to reconcile the essential characteristics of an employment relationship with the reality of how much ordained and licensed ministry is exercised. Whereas an employer could direct employees as to when, where and how they should carry out their duties, the bishop had no such comprehensive power of direction over parochial ministers. The statutory framework proposed in the legislation, which preserved office holder status, but conferred rights and responsibilities that reflected current employment law and practice, was considered more consistent with the character of ministry as it was understood in the Church of England. The Committee looked again at these issues in the light of the Court of Appeal's judgment in *New Testament Church of God v Stewart*, which was given in October 2007. Whereas, on the particular facts of that case, the Court held that the appellant (an ordained minister in the New Testament Church of God) worked under a contract of employment, the judgment emphasised that this involved no general finding that ministers of religion are employees. The Committee therefore saw no reason to reconsider its earlier decision. An analysis of the legal position following *Stewart* and the earlier decision of the House of Lords in *Percy v Church of Scotland* is provided in Appendix V.
9. The Committee considered a proposal that non-stipendiary lay office holders should be brought within the scope of common tenure. It was reminded that the original terms of reference given to the Review Group had been confined to the conditions of service of clergy, but that stipendiary readers and stipendiary licensed lay workers had subsequently been brought within the ambit of the legislation because it was recognised that in some dioceses they were being appointed to posts of

primary responsibility for parishes. The Committee decided that it would be impracticable to bring non-stipendiary lay office holders within the scope of this legislation, although parallel provision could, if thought desirable, be made for them in due course.

10. Questions were raised as to whether bishops' chaplains and chaplains to the armed forces would fall within the scope of common tenure. The Committee was advised that, as there was no free-standing ecclesiastical office of bishop's chaplain, chaplains would only be subject to common tenure if they exercised their duties in conjunction with, for example, a parochial post. Otherwise, they should be employed by the bishop or the diocesan board of finance. Service chaplains in all three armed services were licensed by the Archbishop and were therefore not within the scope of Clause 1 as drafted, and correspondence with the Archdeacon for the Army established that such chaplains were either employed or treated as 'fee earners' by the Ministry of Defence and that therefore common tenure ought not to apply to them.
11. Drafting amendments were agreed to make it clear that only freehold or canonically licensed offices were covered by Clause 1(1).

Clause 2 – Regulations

12. The Committee accepted a submission that the Archbishops' Council's regulation-making power should be expressed in terms of an obligation, since much of the substance of the legislation was contained in the draft Regulations. It was also agreed that the wording of Clause 2(2)(a) should be amended to make it clear that the power to provide for fixed- or limited-term appointments was intended to relate to particular circumstances, which the regulations would themselves specify.
13. A suggestion that Clause 2(2)(d) should be amended to add a power to provide for conciliation or mediation was rejected by the Committee on the grounds that it was unnecessary to provide for this in the regulations. The capability procedure itself could include such provision where appropriate.
14. Concerns were raised that the power in Clause 2(3) was too widely drawn, and it was proposed that the power for regulations to amend Measures of the General Synod and Acts of Parliament should be excluded. The Committee was advised, however, that because of the interrelationship between the draft legislation and secular employment law, it might well be necessary in future to amend Measures or even (with the government's consent) Acts of Parliament by regulation in order to respond to changes in secular employment law. The proposal was therefore rejected.
15. Another submission questioned the appropriateness of the provision in Clause 2(4), allowing recourse to be made to employment tribunals. It was suggested that it was contrary to Scripture for Christians to refer disputes to secular courts, and that employment tribunals were ill-equipped to deal with matters relating to the exercise of ministry. Instead, a system of internal tribunals should be set up. The Committee noted the careful consideration that the Review Group had given to these issues, and the theological reflections by Professor Anthony Thistleton in the Group's first report¹. It accepted that there were insufficient resources, in both human and financial terms, to support a further system of internal tribunals in addition to those already established under the Clergy Discipline Measure 2003. Employment tribunals were accustomed to dealing with organisations with a distinctive ethos. The submission was therefore rejected.
16. The Committee considered a proposal that, when regulations made under this Clause were put before the Synod for approval, there should be no power for the Business Committee to invoke the

¹ GS1527, Annex 3.

‘deemed procedure’ for which provision was made in Clause 2(7). However, bearing in mind that under this procedure any member of Synod could request a debate, and that it was envisaged that amending regulations in the future might sometimes deal with very minor and uncontroversial matters, the Committee rejected this proposal.

17. A proposal that Clause 2(8) should be revised to provide for regulations to be subject to the affirmative resolution procedure in Parliament, rather than the negative resolution procedure, was also rejected. Amending regulations made in the future would not necessarily be of major significance, and where there were important changes these would no doubt be fully debated in Synod. It would not be a good use of Parliamentary time to require affirmative resolution.

Clause 3 – Duration of appointments

18. The Committee considered a submission that office holders should have the right to ask to continue in the post which they held upon reaching retirement age, to reflect the position of employees under the Employment Equality (Age) Regulations 2006. It was noted that the specified retirement age of 70 was higher than the default retirement age of 65 for employees, and that there was already provision in the draft Regulations for retired clergy to hold office on a fixed-term basis. The Church had recognised the need to encourage younger vocations in order to redress the existing imbalance in the age profile of clergy. A right to continue in post indefinitely after retirement age would be inconsistent with that policy. The submission was therefore rejected.

Clause 4 – Provision of housing for office holders

19. The Committee accepted a proposal that the right in Clause 4(1) to be provided with reasonably suitable housing should be extended to those part-time office holders whose particulars of office specified that the provision of housing was part of their terms and conditions of service. This would cover, for example, house for duty posts.
20. A question was raised as to how disputes as to whether accommodation was or was not ‘reasonably suitable’ would be resolved. In response the Committee agreed that the dispute resolution procedure set out in draft Regulation 15 should be extended to disputes arising under Clauses 4, 6 or 8 of the draft Measure.
21. The Committee considered a submission that the proviso in Clause 4(2) was too widely drawn and rendered the right in Clause 4(1) essentially worthless, because any post could be offered on a ‘contracted-out’ basis. The Committee disagreed, emphasising that the right to accommodation could only be removed or modified by express agreement, freely given. Some flexibility was necessary to deal with situations such as that of a clergy couple serving in different benefices but occupying one house, or a curate who owned a house in the parish where he or she was serving agreeing to occupy that house in return for an appropriate allowance. The submission was therefore rejected.
22. A proposal was made that Clause 4(3) should be amended to provide that accommodation should be occupied on the basis of a determinable lease. The Committee was advised that a relationship of landlord and tenant was not appropriate where housing was provided as an integral part of terms and conditions of service, and occupied for the better performance of the office holder’s duties. Nor would a determinable lease offer any greater security in practice than the statutory framework established by the draft legislation. The proposal was rejected.

Clause 5 and Schedule 1 – Parsonages Boards

23. The Committee considered a submission that, if parsonage houses were to be vested in the Parsonages Board of the diocese (“PB”), the PB should be a legal entity separate from the Diocesan Board of Finance (“DBF”). The Committee recognised that one of the major areas of concern in relation to the proposal to transfer the legal ownership of parsonages was a fear that they might be vulnerable to creditors in the event of a DBF becoming insolvent. Although provision had been made in Schedule 2 of the draft Measure to prevent parsonages being treated as part of the corporate property of the DBF, the Committee acknowledged that these fears had not been completely allayed. On the other hand, a number of dioceses were seeking to streamline their administrative structures for sound economic reasons, and therefore the requirement for a separate PB might be unwelcome to them. However, the Committee took the view that the need to secure a transparent separation of the PB from the DBF was of crucial importance, and voted by twelve votes to one in favour of the submission.
24. This decision gave rise to a number of significant consequential amendments. Transitional provisions have been introduced to allow time for diocesan synods in those dioceses where the DBF is currently designated as the PB to make new schemes. The Committee debated whether the membership of the PB should be totally distinct from that of the DBF but came to the conclusion that this was impracticable, in view of the fact that in some dioceses all the members of the diocesan synod were also members of the DBF. The existing provisions as to membership in paragraph 6 of Schedule 1 of the draft Measure were considered to be appropriate. It was agreed, however, that the PB should not be chaired by the person who acted as chair or vice-chair of the DBF.
25. The independence of the PB has also been strengthened by a tighter definition of its purposes in paragraph 7 of Schedule 1, and a new Clause 5(5) providing that any house of residence vested in the PB shall be held for those purposes.
26. The Charity Commission were consulted and on their advice the obligations upon the PB in Schedule 1 to comply with directions made by the diocesan synod (carried over from the Repair of Benefice Buildings Measure 1972) have been deleted as incompatible with the proper exercise of autonomy by an independent charity. Although the Charity Commission did not insist upon this, the Committee also decided that a PB should be treated as a distinct charity from the DBF for the purposes of registration, accounting and the other regulatory requirements of charity law.

Clause 6 – Provision of housing by Board and other relevant housing providers

27. The Committee agreed amendments to Clause 6(1)(b) to bring the scope of the PB’s duty to oversee the provision of housing in line with the right to be housed in the amended Clause 4, and to make it clear that this duty could be discharged by making arrangements with another body – for example, a patron, PCC or parish trust – for that body to provide accommodation where appropriate.

Clause 7 – Vesting of parsonage houses and houses of residence for team vicars

28. A substantial number of submissions were received concerning the proposal that the legal ownership of parsonage houses should be transferred to the PB. The Committee readily acknowledged that this was the most controversial of the provisions contained in the draft legislation, and that the issues needed to be looked at carefully and with an open mind. As well as considering the written representations, the Committee heard oral submissions from a number of

Synod members and from invited bodies, including the Patrons Consultative Group and three patronage societies.

29. The objections to the proposed transfer (briefly summarised) were as follows:

- (a) it was not necessary - the aims of the legislation could be achieved without it;
- (b) it was a centralising exercise which would upset the historic balance of power between the parish and the diocese, and loosen the ties between the local community and the church;
- (c) it would undermine the proper independence of the incumbent and hinder him or her from exercising a prophetic ministry;
- (d) it would materially alter the nature of the 'living' to which the patron presented the incumbent;
- (e) it would remove a symbol - which had considerable significance for some - of the rootedness of the Church of England in its local context;
- (f) it would put parsonages at risk of becoming available to creditors in the event of a diocese becoming insolvent.

30. In support of the transfer, the Steering Committee argued that it would be illogical for the legislation not to encompass housing, given that this was an important element in the terms and conditions of service of office holders. The aim of the provisions overall was to establish a common framework governing the relationship between the housing provider and the office holder, in the interests of fairness and parity. All office holders whose appointment carried with it the provision of a house would be entitled to be housed appropriately for the duration of their tenure of office, and to object to an independent body in the event of a proposed sale or other regulated transaction in relation to a house which they occupied. This reflected a proper balance of rights and responsibilities between the housing provider, which had the overall responsibility for providing and maintaining the accommodation, and the office holder and his or her household, whose home it was.

31. The Committee recognised the strength of feeling that underlay the opposition to the transfer of parsonages, but the majority of members took the view that many of the concerns were founded on perception rather than reality. The heart of the patron's role was to work with the bishop and the parish in choosing the most suitable person to serve as incumbent. The nature of the incumbent's freehold had changed steadily over the centuries but this had not taken away anything material from the patron's rights. Prophetic ministry did not depend on ownership of property, and was in any event a calling not exercised by the incumbent alone but by the whole people of God. . Any symbolic force in the parsonage being vested in the incumbent was now very much diminished, especially in multi-parish benefices where there was no direct local connection between the house and the majority of the constituent parishes. None of the objections put forward was, in the view of the majority of the Committee, strong enough to outweigh the case for an approach based on fairness and parity between office holders in the terms on which they occupied their accommodation.

32. The Committee nonetheless acknowledged that the concerns about the potential vulnerability of parsonages to creditors of a DBF had force, and it was not persuaded that the provisions of the legislation as originally drafted were adequate to address this. However, the establishment of the PB as a separate independent charity with clearly defined purposes, coupled with the constraints on the application of money from sales contained in Schedule 3 of the draft Measure (which replicated the present position under the Parsonages Measure 1938) would deliver much greater protection and minimise any risk.

33. The Committee agreed to retain Clause 7, ten members voting in favour and three against.
34. In the light of this decision, the Committee at a later meeting accepted a submission that houses occupied by team vicars and held as DBF corporate or glebe property should also be transferred to the PB, as the relevant housing provider. Eleven members voted in favour and one against.
35. The Committee also accepted a proposal that the date of vesting in Clause 7(2) should be clarified. It agreed that the date on which the benefice was deemed to become vacant at the end of a period of suspension was not relevant here.

Clause 8 – Powers to acquire and dispose of houses of residence and carrying out of works and

Clause 9 – Transactions by relevant housing providers relating to houses of residence

36. The submissions made in relation to these two Clauses largely concerned the interrelationship between Clause 8(2) and Clause 9(1). It was argued that improvements and other alterations to a house could have considerable impact and that these should be treated as regulated transactions, giving the office holder and other interested parties a right to object. The Committee agreed. Repairs were in a different category. Housing providers had a duty under the draft Regulations to keep houses in repair, and they had to be able to discharge this duty promptly. Consultation with the office holder in relation to repairs was, however, appropriate and Clause 8 should so provide.
37. The Committee accepted a proposal that there should be a saving provision in Clause 9(6)(b) to protect the position of those diocesan surveyors who were already in post when the new qualification requirements were first introduced.

Clause 10 – Codes of Practice

38. The Committee considered a submission that the Synodical approval of Codes of Practice should not be subject to the ‘deemed procedure’. It rejected this for the same reasons as cited in paragraph 16 above.
39. The Committee also considered a proposal that housing providers (and the Church Commissioners in particular) should be named as statutory consultees in relation to any Code of Practice dealing with housing. This proposal was rejected only because it was felt to be unhelpful to name particular consultees in the legislation, thereby potentially excluding others, and in practice it was inconceivable that the housing providers would not be consulted.

Clause 11 – Supplementary provisions

40. Clause 11(6) was challenged as being contrary to case law. The Committee did not accept this argument. As explained in paragraph 8 above, there had been no finding in any court or tribunal that office holders in the Church of England were also employees. The intention of the legislation was not to confer employment status but to create an appropriate statutory framework of rights and responsibilities.

Clause 12 – Interpretation

41. No submissions were received in relation to this clause and the only changes made were consequential on other amendments to the draft legislation.

Clause 13 – Amendment of Enactments

42. The Committee accepted that the power in Clause 13(1), to make consequential amendments by Order, needed to be broad in its scope to be capable of addressing any necessary consequential changes to existing legislation that might come to light after the draft Measure had received final approval. However, it agreed that it would be appropriate to introduce a ‘sunset clause’ with the effect that the power could only be exercised for a period of five years.

Clause 14 – Repeals

43. The only changes made to this clause were either drafting or consequential amendments.

Clause 15 – Citation, commencement and extent

44. The only submission made in relation to this Clause was withdrawn, and the Committee was content that the Clause should stand unamended.

Schedule 1 – Constitution and Functions of Parsonages Boards

45. The amendments to this Schedule are discussed in the context of Clause 5 (paragraphs 23-26 above).

Schedule 2 – Further Provisions Relating to Parsonage Houses and other Houses of Residence

46. The amendments to paragraphs 1 and 2 of this Schedule are consequential on the Committee’s decision that team vicars’ houses should be transferred to the PB (paragraph 33 above). Paragraph 3 of the Schedule was deleted in consequence of the amendments to Clause 5 (paragraphs 22-25 above).

Schedule 3 – Matters Relating to Regulated Transactions

47. Minor drafting amendments only have been made to this Schedule.

Schedule 4 – Amendment of Enactments

and

Schedule 5 – Repeals

48. The Committee accepted a proposal that section 59 of the Pluralities Act 1838, which enables parsonages to be let on a short term basis during a vacancy, should continue to apply to parsonages vested in the PB. The other changes to these Schedules are either drafting amendments or are consequential on the transfer of team vicars’ houses to the PB (paragraph 34 above).

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) REGULATIONS

PART I – INTRODUCTORY

Regulation 1 – Citation and coming into force and

Regulation 2 – Interpretation

49. No proposals for amendment were received in respect of these regulations. In response to the Committee's consideration of Regulations 22-28 (see paragraphs 77-96 below) a definition of 'working day' has been added in Regulation 2.

PART II – PARTICULARS OF OFFICE

Regulation 3 – Statement of initial particulars of office

50. The Committee considered a submission that the written statement of particulars should be given by the bishop himself, rather than by an officer of the diocese as prescribed in Regulation 3(1), in order to preserve the ecclesiological relationship between the bishop and the office holder. The Committee took the view that this would place an unnecessary administrative burden on bishops. The statement of particulars was purely descriptive – the bishop would continue to grant the licence or other instrument of appointment. The fact that the officer in question was to be nominated by the bishop maintained proper ecclesiological accountability. The submission was rejected, with one vote in favour, eleven against and one abstention.
51. A concern was raised as to whether Regulation 3(5)(d) was intended to qualify any existing rights in respect of parochial fees. The Committee was satisfied that this was not the case: the intention was simply that the statement of particulars would state whether, as a matter of fact, a particular office holder was entitled to receive such fees and, if so, whether the amount of such fees was to be deducted from his or her stipend.

Regulation 4 – Statement of initial particulars: supplementary and

Regulation 5 – Note about disciplinary, capability and grievance procedures and pensions and

Regulation 6 – Statement of changes

52. No proposals for amendment were received in respect of these regulations and the Committee was content that they should remain unamended.

Regulation 7 – Reasonably accessible document

53. A representation was made emphasising the importance of making all relevant material freely available on a central website, and the Committee concurred with this. On the other hand, another submission cautioned against overdependence on web technology. The Committee noted that provision was already made for material to be made available to office holders by other means.

Regulation 8 – Right to itemised statement of stipend

54. No proposal for amendment was made in respect of this regulation and the Committee was content that it should remain unamended.

Regulation 9 – References to employment tribunals

55. A proposal was made that this regulation should be amended to incorporate a reference to the form (ET1) on which application should be made to the tribunal. The Committee considered that it was not necessary to go into this level of detail, particularly as the title of the relevant form might be changed from time to time. The proposal was rejected.

Regulation 10 – Determination of references

56. A representation was made noting that the powers of the tribunal in Regulation 10(4) and (5) did not include a power to restore unauthorised deductions from stipend or for the applicant to recover costs. The Committee noted that this regulation reflected the scope of Section 12 of the Employment Rights Act 1996, and considered that it was appropriate to replicate the existing statutory provision.

PART III – RIGHT TO STIPEND AND PROVISION OF ACCOMMODATION

Regulation 11 – Entitlement to stipend of office holders

57. The Committee considered a proposal that the entitlement in Regulation 11(1) should be extended to part-time office holders. The Committee recognised that there was a wide variety of part-time arrangements in place and that, since a stipend was not a salary and not calculated on the basis of hours of work, it would be impossible to devise a pro-rata formula which would fit all situations. However, it was agreed that, where a stipend was specified in the statement of particulars for a part-time post, the office holder should be given an entitlement to that stated figure.

58. The Committee also discussed the concerns raised in the Synod debate in February 2007 as to whether it was appropriate to confer a legal entitlement to stipend in the absence of any corresponding obligation on PCCs to pay the parish share and without any means whereby office holders could be made redundant on financial grounds. The Committee acknowledged the validity of the concerns, but the problem was not a new one and the most that Regulation 11 had done was to bring it into sharper focus. For stipendiary office holders, the payment of stipend was a fundamental element of their terms of service and it was essential that the legislation should address it. The underlying issues were beyond the remit of this legislation to address, although dioceses were already doing much to plan for the future, through imaginative stewardship campaigns and pastoral reorganisation where necessary. A specific query was raised about the accounting implications of the provision- would it require DBFs to show future payments of stipend as a liability on their balance sheets? Professional advice obtained by the Archbishops' Council took the view that there would be no such requirement.

Regulation 12 – Duties of relevant housing provider

59. A question was raised about the extent of the obligation to pay recurring charges, particularly in relation to water charges where the water was metered. To avoid possible ambiguity, the Committee agreed that it would make sense for the particulars of office to specify the recurring charges applicable in each particular case.

60. The Committee accepted a proposal that the wording of Regulation 12(2)(c)(iii) should be amended to make it clear that this obligation related only to fixtures and fittings supplied by the housing provider.

61. A suggestion that there should be an obligation to make good consequential losses to the office holder was rejected, on the grounds that it was the responsibility of the office holder to insure his or her personal effects against loss or damage.

Regulation 13 – Rights of entry

62. The Committee agreed to a clarificatory amendment, making it plain that the right of entry in relation to contents referred only to those contents (if any) supplied by the housing provider.

Regulation 14 – Duties of office holder

63. A proposal was made that the legislation should provide for a record to be kept where an office holder had seriously failed to comply with his or her duties under Regulation 14(1)(b). The Committee agreed that this was a sensible suggestion, but considered that it was more suitable for a code of practice. The proposal was therefore rejected.
64. The Committee considered a submission that office holders should be permitted to take in lodgers and use the provided house for bed and breakfast lettings without the approval of the housing provider. The Committee noted that the use of the word 'household' in Regulation 14(1)(e) was intended to acknowledge the fact that an office holder might wish to share the accommodation with someone other than a member of his or her immediate family. However, any activity which could be seen as in the nature of a business, such as letting rooms or a bed and breakfast business, ought to be subject to the consent of the housing provider, not least because it might require planning consent or permission under a restrictive covenant. The requirement that such consent must not be unreasonably withheld reflected a proper balance of interests between the owner and the occupier of the house. The submission was rejected, with two members voting in favour and nine against.
65. A request was made that the period of entitlement in Regulation 14(2) for the household of a deceased office holder to remain in occupation of the provided house should be extended from three months to six. The Committee noted that the present legal entitlement under section 36 Pluralities Act 1838 was two months, and that therefore the new provision was more generous. It was also made clear in the wording of the regulation that there was a discretion to allow a longer period. The proposed amendment was rejected, one member voting in favour and ten against. A question as to whether the period of occupation was rent-free was answered in the affirmative; the household would continue in occupation on the same terms as before. The Committee also considered a proposal that similar provision should be made where the office holder had deserted his or her family. It was thought better, on balance, that dioceses should have complete discretion to deal with such situations, depending on the particular circumstances of each case. The family would in any event have the right to remain until such time as the office holder resigned or was removed from office. The proposal was rejected, again by ten votes to one.

Regulation 15 – Disputes and variation of terms

66. The Committee agreed that the scope of the dispute resolution procedure in Regulation 15(1) should be extended to apply to any dispute concerning provided housing, including any arising under Clauses 4, 6 or 8 of the draft Measure.

Regulation 16 – Rights to object to regulated transactions

67. The Committee considered two submissions proposing that office holders should be given a right of veto in relation to regulated transactions, instead of a right of objection. This proposal was

rejected, the Committee taking the view that the regulation as drafted represented a proper balance between the respective rights and responsibilities of the office holder and the housing provider. All parties would have the opportunity to make representations to an independent adjudicator, with the burden resting on the housing provider to satisfy the adjudicator that the transaction ought to proceed. To give a right of veto to any party would be contrary to the spirit of common tenure.

Regulation 17 – Service of notices

68. A representation was made that electronic mail was not sufficiently reliable to be treated as a valid method for the service of notices. This was rejected by the Committee.

PART IV – MINISTERIAL DEVELOPMENT REVIEW, EDUCATION AND TRAINING

Regulation 18 – Ministerial development review

69. The Committee received a number of submissions questioning whether a system of MDR in which office holders could have confidence and which at the same time took account of the limited resources available to the Church could be delivered. Several specific suggestions for amendment to Regulation 18 were also made, as follows:

- (a) the regulations should make further detailed provision about the MDR process;
- (b) there should be an MDR scheme in each diocese to ensure consistency;
- (c) diocesan schemes should be validated by a national body;
- (d) bishops should be under a duty to comply with national guidance, rather than an obligation to have regard to it;
- (e) reviews should be annual rather than biennial;
- (f) archbishops should be obliged to undergo MDR at least once every two years in the same way as other office holders; and
- (g) only people who are themselves subject to common tenure, and therefore obliged to participate in MDR on their own account, should act as reviewers.

70. The Committee referred submissions about the content of the MDR guidelines to the Implementation Panel, and took into account the Panel's report before coming to a final decision on the issues before it. The Committee was advised that there had been extensive consultation with diocesan bishops and others, and that the result of this had been a clear preference for flexibility within a set of nationally agreed general principles. This would allow dioceses to build upon the good practice in this area which many had already developed. Although the initial preference had been for the legislation to require reviews on an annual basis, the obligation to conduct reviews at least once every two years represented a realistic assessment of what could be achieved at present. It was important to recognise that MDR, unlike the capability and grievance procedures, was not a mechanism for addressing problems – it was rather intended to promote the professional development of all office holders, and the local context should determine how it was best provided.

71. In the light of that advice the Committee made the following decisions on the submissions before it:

- (a) the proposal that the regulations should make more detailed provision about the MDR process was rejected;
- (b) the proposal that each bishop should be required to make an MDR scheme for his own diocese was accepted;

- (c) the proposal that diocesan schemes should be validated by a national body was rejected, one member voting in favour and ten against;
- (d) the proposal that bishops should be under a duty to comply with national guidance, rather than an obligation to have regard to it, was rejected, with two votes in favour and nine against;
- (e) the proposal that reviews should be required to be annual rather than biennial was rejected;
- (f) the proposal that archbishops should undergo review at least once every two years was accepted; and
- (g) the proposal that only people who were themselves subject to common tenure should act as reviewers was rejected.

Regulation 19 – Continuing ministerial education

72. Concerns were raised that the obligation to participate in continuing ministerial education (“CME”) ought to be limited to training that was tailored to the needs of the individual office holder. While rejecting a proposal that the obligation should extend only to training specifically identified in MDR reports, the Committee accepted an alternative suggestion that the arrangements for CME made by the bishop should be appropriate to the needs of the particular office holder.
73. A proposal to include in the legislation an entitlement to time off for CME was rejected, on the grounds that participation in CME should be regarded as an integral part of the duties of office and time to participate in it should be allowed on that basis.

Regulation 20 – Holders of designated training posts

74. The Committee agreed that the sub-heading of this regulation should be amended to make it clear that it was concerned with designated training posts.

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

Regulation 21 – Weekly rest period

75. A proposal was made that this regulation should be deleted, because it was not practicable for many clergy, especially those in sole charge of a parish, to take an uninterrupted rest period of at least twenty-four hours, given the unpredictability of urgent pastoral demands. The Committee noted that the regulation gave an entitlement to such a rest period; it did not impose an absolute obligation on the office holder to take it. The provision was intended to encourage good practice and to help office holders manage the sometimes unrealistic expectations of their parishioners. A degree of flexibility in practice would, of course, be needed, but the regulation as drafted allowed for this. The proposal was rejected.
76. The Committee also considered a submission that the regulation should be amended to permit Sundays off. It took the view that in most instances it would clearly be inappropriate for office holders to take their regular rest day on a Sunday, and occasional Sundays off would form part of the office holder’s annual leave allowance. There could be exceptional cases, however – churches in the City of London, for example, where services were offered only on weekdays – where Sunday might be the most appropriate weekly rest day, and the regulation as drafted was sufficiently flexible to permit this. The submission was rejected.

Regulation 22 – Annual leave

77. The Committee considered a submission which argued that that, while 36 days' annual leave was more than most clergy currently take, it was less than the three months' absence permitted to incumbents under Canon C25 and that the existing canonical provision should be retained to allow for flexibility in times of need. The Committee took the view that it was important to regularise the position for all office holders on common tenure, in a way that properly balanced the respective interests of the office holder and the parish or other ministerial context. Particular circumstances such as family illness or bereavement should be addressed through the special leave arrangements. The submission was rejected.
78. A concern was raised that many clergy would find it impossible to take the leave to which they would be entitled under this regulation because there was no provision for their duties to be covered in their absence. A proposal was therefore made that the regulation should specify who was to be responsible for making arrangements for cover. The Committee considered that such an amendment would be inappropriate, as arrangements would differ according to the circumstances. The granting of a legal entitlement to leave, and improved HR provision, should encourage dioceses to tighten up their systems for managing authorised absence. The proposal was rejected.
79. The suggestion was made that the regulation should specify that annual leave must be agreed in advance with the person nominated for the purposes of Regulation 3(1). The Committee felt that this idea was unnecessarily bureaucratic and rejected the submission, although it saw value in some more informal monitoring of an individual's leave.
80. A request was made for clarification as to whether there was an entitlement to bank and public holidays in addition to the stated annual leave provision. The Committee was advised that, as the regulation was drafted, there was no such entitlement, and it then went on to consider whether this position should be changed. There were difficulties in providing an unqualified entitlement to bank and public holidays, as Christmas Day and Good Friday, for example, were self-evidently working days for most clergy. Members of the Committee were not of one mind on this issue, but a proposal that a specific entitlement to bank and public holidays should be given in addition to the stated minimum annual leave provision was defeated by eight votes to three. The Committee agreed that this was a matter that should be determined locally according to the circumstances of the particular post.
81. Three submissions addressed the issue of the number of Sundays to be taken as leave. Two of these submissions proposed that the regulations should state in terms how many Sundays could be taken as part of the annual leave entitlement, while the third suggested that they should prescribe how many Sundays must be taken. There was no support from the Committee for any of these proposals, as it was agreed that there must be an element of discretion to meet different circumstances. It was agreed, however, that the wording of Regulation 22(1) should be amended to allow the statement of particulars to specify the maximum number of Sundays that could be taken as part of the individual's annual leave.
82. It was proposed that the regulation should give a pro-rata entitlement to annual leave for those occupying part-time posts. The Committee agreed that, while it would not be practicable to specify a formula for calculating such entitlement – given the varying nature of part-time arrangements – the regulation should confer an entitlement to such annual leave as might be specified in the particulars of office.

83. It was also proposed that Regulation 22(5) should provide for a minimum period of special leave for removal or resettlement. The Committee rejected this proposal, considering that the matter should be left to the discretion of the bishop.

Regulation 23 – Entitlement to maternity, paternity, parental and adoption leave

84. The Committee considered a proposal that Regulation 23(2) should be amended to specify that the rights granted under the Archbishops' Council's directions should be at least equivalent to the minimum rights afforded to employees in secular law. The Committee noted that the present guidance issued by the Council was in fact more generous than the equivalent secular provision. However, it was advised that, because it would not be possible to express the rights given to office holders in exactly the same terms as those for employees, the proposed amendment could lead to unfruitful argument as to whether they were truly equivalent. The proposal was therefore rejected.

Regulation 24 – Right to time spent on public duties

85. The Committee received a number of submissions which sought either to broaden the scope of this provision or to clarify whether certain activities fell within it. The Committee's approach was to oppose further prescription. The regulation was not intended to restrict any activity, but rather to provide an entitlement to time off for certain specified duties that were clearly of a public nature. This did not prevent other duties being undertaken, either as an integral part of the duties of office or otherwise by agreement. Furthermore, some public duties, such as jury service, were compulsory in law and the regulation was not intended to cover these.
86. The Committee accepted a proposal for an amendment to Regulation 24(2,) to provide that any remuneration received for the duty in question should be taken into account in assessing what would constitute a reasonable period of time off.
87. A question was raised as to whether the bishop was sufficiently objective to determine disputes under Regulation 24(3). The Committee took the view that the bishop was the proper person to make this assessment, and agreed that the scope of his determinative role should be extended to cover any of the matters specified in Regulation 24(2). If an office holder was not satisfied with the bishop's determination, the grievance procedure could be invoked.
88. The Committee accepted a proposal that there should be a tighter definition of a charity for the purposes of Regulation 24(4)(a) and that this provision should also include reference to a registered friendly society.

Regulation 25 – Right to time off for ante-natal care

89. Proposals were made that this right should be extended to the spouse of a pregnant office holder, and that it should apply more generally to cover all visits by office holders to health professionals or other advisers. There was no support from the Committee for either of these proposals, given that employees were not entitled to such extended rights and that most office holders in the Church had greater freedom to organise their own time than those in other professions.

Regulation 26 – Payment of stipend during time off or time spent on public duties

90. The Committee agreed that this provision should be amended to exclude reference to Regulation 23, as provision was already made within that regulation for the directions issued by the

Archbishops' Council to deal with the payment of stipend during periods of maternity, paternity or adoption leave.

91. The Committee also agreed, in the light of its discussion about Regulation 24, that provision should be made whereby there could be an agreed reduction in stipend, specified in the particulars of office, if the office holder undertook public duties for which remuneration was received.

Regulation 27 – Sickness

92. Submissions on this regulation focused on the notification requirements in Regulation 27(1) and the requirement to make reasonable endeavours to arrange cover in Regulation 27(3).
93. The Committee was advised that the Church Commissioners acted as the authority for statutory sick pay (“SSP”) in relation to the stipendiary clergy. As such, they had a statutory duty to record any period of sickness absence amounting to one day or more (since successive short periods of absence could be linked for the purposes of SSP). However, the Commissioners were willing to accept self-certification for the first seven days of any period of illness, and were content that notification during this period did not have to be in writing. The Committee therefore agreed that Regulation 27(1) should be amended accordingly.
94. The Committee accepted that, as drafted, Regulation 27(3) had the potential to cause unnecessary anxiety. Depending on the circumstances, “reasonable endeavours” could amount simply to notifying a responsible person (such as a churchwarden or rural dean) who would then make arrangements for cover. It was agreed that the regulation should be amended to make this clear. A proposal that it should be the bishop who made the arrangements was, however, rejected.
95. An argument was made that individual dioceses should continue to have discretion, as at present, in the arrangements that they made as to payment of stipend in cases of long-term illness. The Committee rejected this, on the basis that this was an area where it was appropriate that there should be consistency of practice across dioceses.

Regulation 28 – Medical examination

96. A proposal was made that office holders should be obliged to disclose their medical records on request, because it was often difficult to make a fair assessment of a person’s state of health in the absence of relevant evidence about their medical history. The Committee was advised that this proposal went beyond what could properly be required by law, but that it would be in order, if the legislation so provided, for reasonable inferences to be drawn from a refusal to disclose relevant medical records. The Committee agreed that Regulation 28 should be amended accordingly.

PART VI – DURATION AND TERMINATION OF APPOINTMENTS AND COMPENSATION

Regulation 29 – Fixed and other limited term appointments

97. A general submission was made that the principles of common tenure were undermined by the provision for any fixed or limited term appointments. The Committee noted that it had been clear from the start of the Review Group’s work that there would be some circumstances in which such appointments would be needed, but the intention, reflected in the draft legislation, had always been to keep these to a minimum. The proposal that the regulation should be deleted was rejected, one member voting in favour and twelve against.

98. A submission that the provision for fixed term appointments of office holders over the retirement age of 70 should be removed was rejected, again by twelve votes to one, for the reasons explained in paragraph 18 above.
99. A question was raised about the potential difficulties of managing 'dual-role' posts where, for example, an office holder held a half-time parochial office, with a house provided, in conjunction with a half-time employment contract for a diocesan post. The Committee accepted that the legislation should provide a mechanism whereby, from the outset, both parties would know where they stood if the office holder resigned or was removed from one of the two interconnected posts. It was therefore agreed that an additional paragraph should be added to Regulation 29(1) whereby the particulars of office could – but did not have to – specify that such an office would terminate on the office holder ceasing to hold the related post.
100. The Committee accepted that the reference to prohibition for life in Regulation 29(7)(b) was incorrect and should be deleted. The effect of such a prohibition was that the office holder could never again exercise any clerical duties, and so it would be entirely inappropriate to appoint such a person to a probationary post. There was provision in the Clergy Discipline Measure 2003 for prohibition for life to be overturned in certain circumstances, but in that case the effect was to nullify the original penalty.

Regulation 30 – Posts subject to potential pastoral reorganisation

101. A number of submissions suggested that the limit of three years on the designation of a post under this regulation was too short, and proposed either extending the period or providing for it to be renewed or extended. The Committee recognised that there were circumstances in which proposals for pastoral reorganisation could not realistically be carried through within three years, notwithstanding the best efforts of the officers involved at diocesan and national level. A case dependent on the outcome of a long and controversial planning dispute was cited as one example. The Committee agreed that Regulation 30(3) should be amended to allow the bishop to specify a period not exceeding five years. This was considered to represent an appropriate balance between the interests of the office holder and the diocese.
102. Conflicting submissions were made in relation to the provision of compensation limited to one year's loss of office under Regulation 30(2), some regarding this as inadequate and others as over-generous. The Committee declined to make any amendment to this provision.
103. A proposal was received that the legislation should limit all payments of compensation under Schedule 4 of the Pastoral Measure 1983 to a maximum of four years' loss of office. The Committee took the view that it was not within the remit of this legislation to amend the application of Schedule 4 to office holders other than those in posts designated under Regulation 30, especially as the Toyne Review had declined to recommend any alteration to the present arrangements.

PART VII – CAPABILITY AND GRIEVANCE PROCEDURES

Regulation 31 – Archbishops' Council to issue directions concerning capability procedures

104. Submissions relating to the content of the capability procedure, as opposed to the legislative provisions governing it, were referred to the Implementation Panel.

105. A submission that Regulation 31(7), permitting the use of the 'deemed procedure', should be deleted was rejected by the Committee, for the reasons already explained in paragraph 16 above.

Regulation 32 – Archbishops' Council to issue directions concerning grievance procedures

106. Submissions relating to the content of the grievance procedure, as opposed to the legislative provisions governing it, were referred to the Implementation Panel.

107. A proposal that the words 'endeavour to' should be deleted from Regulation 32(4) was rejected by the Committee for the reasons explained in paragraph 84 above in relation to a similar proposal concerning Regulation 23 .

108. A concern was raised that the grievance procedure did not provide an effective mechanism for addressing cases of serious pastoral breakdown. The Incumbents (Vacation of Benefices) Measure 1977 would not apply where a benefice was held under common tenure. Although the procedures under the 1977 Measure had been infrequently used and were protracted and costly to operate, they had provided a legal process whereby a churchwarden or member of the PCC could be disqualified where they were found to have contributed to the breakdown of pastoral relationships in a parish. There was no comparable sanction in this legislation. The Committee acknowledged the problem but took the view that it needed to be addressed in the wider context of lay office holders' responsibilities .

PART VIII – UNFAIR DISMISSAL

Regulation 33 – Right to apply to employment tribunal

109. The Committee considered a proposal that Regulation 33(4) should be deleted because it discriminated against those over 70. It took the view that this provision needed to be read in conjunction with Regulation 29(1)(b). It was not intended that the capability procedure should be used where the office holder was over 70, unless this was absolutely unavoidable. Instead, fixed term appointments would enable the bishop and the office holder to review the situation at regular intervals and, if the office holder was still fit and willing to work, to make what adjustments might be necessary in his or her duties.

DRAFT AMENDING CANON NO. 29

110. No submissions of substance, as opposed to drafting amendments, were received in relation to the draft amending Canon. With the exception of one minor correction, the Committee was content that the Canon should remain unamended.

**On behalf of the Committee
Geoffrey Tattersall QC (Chair)**

21st December 2007

Appendix I**Proposals for amendment and submissions****Part one****Synod members who made proposals for amendment or submissions in time**

<i>Name</i>	<i>Constituency and Synod Number</i>
Atherstone, the Reverend Canon Hugh	Chichester (99)
Atkinson, the Venerable Richard (the Archdeacon of Leicester)	Leicester (135)
Ayers, the Reverend Paul	Bradford (75)
* Baker, the Reverend Jonathan	Oxford (176)
* Benfield, the Reverend Paul	Blackburn (72)
* Burbeck, Mr Michael	Salisbury (403)
Campbell, Dr Graham	Chester (288)
Cheeseman, Mr Jim	Rochester (389)
Clark, the Reverend Jonathan	London (154)
Craven, Professor John	Archbishops' Council (468)
Giddings, Dr Philip	Oxford (375)
Greener, the Venerable Jonathan (the Archdeacon of Pontefract)	Wakefield (231)
Greenwood, Mr Adrian	Southwark (416)
* Hartley, the Reverend Dr John	Bradford (76)
Hawes, the Venerable Arthur (the Archdeacon of Lincoln)	Lincoln (144)
* Hill, the Right Reverend Christopher (the Bishop of Guildford)	Bishops (21)
Humphery, Mr James	Salisbury (405)
Magowan, the Venerable Alistair (the Archdeacon of Dorset)	Salisbury (209)
Mansell, the Venerable Clive (the Archdeacon of Tonbridge)	Rochester (195)
Nicholls, Mr Bill	Lichfield (339)
* Russell, the Venerable Norman (the Archdeacon of Berkshire)	Oxford (182)
Saxbee, the Right Reverend Dr John (the Bishop of Lincoln)	Bishops (25)
* Scowen, Mr Clive	London (358)
Simmonds, Mr Gordon	Chelmsford (284)
* Sugden, the Reverend Canon Dr Chris	Oxford (183)
* Trott, the Reverend Stephen	Peterborough (186)
Walker, Mr Timothy (the Third Church Estates Commissioner)	Ex-officio (461)
Whitworth, Mrs Ruth	Ripon & Leeds (388)

* Attended a meeting, or meetings, of the Committee and spoke to their proposals for amendment in accordance with Standing Order 53(b).

Part two**Other proposals for amendment or submissions from non-Synod members or bodies**

* All Souls, the Guild of	from Mr Louis A. Lewis
^ Amicus/Unite	
Berkeley, Mr R.J.	
Bond, Mr M.J.A.	
Brooks, Mrs Ann (the Hon. Lady)	
Burkitt, the Reverend Mark	
Carter, Mr M.F.	
Chandos-Pole, Mrs Jill	
Chichester, Mr P.D.H.	
+ Church Society Trust	from the Reverend David Phillips
Church Union	from Mr David Llewelyn Morgan
Copeman, Dr P.W.M.	
Crawley, Mrs Anne	
De La Warr, Earl	
Diocese of Birmingham	from Mr Jim Drennan
Diocese of Exeter	from Mr Mark Beedell
Diocese of Guildford	from Mr Stephen Marriott
Diocese of Ripon & Leeds	from Mr Philip M. Arundel
Diocese of Worcester	from Mr Robert Higham
Dobbie, the Reverend C.W.G.	
Elwes, Mr H.W.G.	
~ English Clergy Association	from the Reverend John Masding
Fenton, the Reverend Geoffrey	NSM Wedmore w Theale and Blackford <i>B & W</i>
Frais, the Reverend Jonathan	
Frampton, Mary B.F.	
Goodenough, Mr F.R.	
Gordon-Duff-Pennington, Mrs Phyllida	
Grylls, Mr R.G.	
Hambler, Mr G.	
Hardy, Mrs J.M.	
Hickman, Mr Patrick	
Howard of Rising, Lord	
Humphrey, Mr John	
Loyd, Mr C.L.	
Marlesford, Lord	
Milnes Coates, Professor Sir Anthony	
Mott-Radclyffe, Mrs Stella	
Oriel College, Oxford	from Mr E.W. Stephenson
# Patrons Consultative Group	from Dr P.W. Kent
Phipps Walker, Mr Guy	
Save Our Parsonages	from Mr Anthony Jennings
Spencer, Earl	
Stanier, Sir Beville	
Tollemache, Sir Lyonel	
Wake, Sir Hereward	
Wilson, Professor David	

At the invitation of the Committee, the following attended a meeting of the Committee in order to speak to proposals for amendment or submissions listed above:

- * Mr Louis A. Lewis (Warden).
- ^ Rachael Maskell and the Reverend Roger Stokes.
- + The Reverend Canon Michael Walters (Chairman) and the Reverend David Phillips (Secretary).
- ~ The Reverend John Masding (Chairman) and Dr Peter Smith (Trustee).
- # Dr Paul Kent and Mr David Healey.

In addition, the Right Reverend Richard Frith, the Bishop of Hull, Chair of the Terms of Service Implementation Panel, attended the eighth meeting of the Committee to introduce the Panel's report and its recommendations.

Appendix II**Summary of proposals and submissions received which raised points of substance and of the Committee's consideration thereof**

* An amendment/amendments based wholly or in part on the original submission was/were proposed by the Steering Committee.

Proposal made in Committee by a member of the Committee.

Part one**Draft Ecclesiastical Offices (Terms of Service) Measure**

Clause of revised draft Measure (GS 1637A)	Summary of submission	Submitted by	Committee's decision
Short title	Change to 'Ecclesiastical Offices (Abolition of Freehold and Terms of Service) Measure'.	The Reverend Paul Benfield	Not accepted.
1	Common tenure should apply to licensed office holders only.	The Reverend Paul Benfield Mr Clive Scowen	Not accepted.
	Retain status quo for freeholders.	The Reverend Stephen Trott English Clergy Association Patrons (generally)	Not accepted.
	Existing freeholders should retain freehold when moving post.	English Clergy Association	Not accepted.
	Defer freeholders' right to opt in to common tenure for ten years.	Mr Jim Cheeseman	Not accepted.
	Include requirement for office holder to seek independent advice before opting in under clause 1(4).	English Clergy Association	Not accepted.
	Employment contracts for licensed clergy.	The Reverend Stephen Trott	Not accepted.
	Extend common tenure to service chaplains.	Amicus/Unite	Not accepted.
	Common tenure should not apply to cathedral clergy.	English Clergy Association	Not accepted.
	Extend common tenure to bishops' chaplains.	Worcester diocese	Not accepted.

	<p>Make explicit that Measure does not apply to employees.</p> <p>Extend common tenure to clergy with permission to officiate only.</p> <p>Non-stipendiary lay office holders should come under Measure.</p> <p>Measure should include express provision that nothing in it affects any right of patronage.</p>	<p>Mr Bill Nicholls</p> <p>Amicus/Unite</p> <p>Mr Clive Scowen</p> <p>Patrons Consultative Group</p>	<p>Accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p>
2	<p>Delete provision for establishment of capability procedure.</p> <p>Strengthen clause 2(1) to require Archbishops' Council to make regulations.</p> <p>Regulations should be approved by affirmative Parliamentary resolution.</p> <p>General Synod to be responsible for making regulations. Amendments to be approved through full Measure procedure.</p> <p>Clarify application of clause 2(2)(a).</p> <p>Narrow scope of clause 2(3).</p> <p>Clause 2(3) should be time-limited.</p> <p>Secular employment tribunals unsuitable for clergy.</p> <p>Include provision for use of conciliation and mediation in capability procedure.</p>	<p>The Reverend Paul Benfield</p> <p>The Reverend Canon Robert Cotton #</p> <p>English Clergy Association</p> <p>The Reverend Dr John Hartley</p> <p>Mr Michael Burbeck</p> <p>Mr Bill Nicholls Mr Clive Scowen</p> <p>Mr Robert Higham # Mr Clive Scowen English Clergy Association</p> <p>English Clergy Association</p>	<p>Not accepted.</p> <p>Accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p>
3	<p>Remove statutory retirement age.</p>	<p>Amicus/Unite English Clergy Association</p>	<p>Not accepted.</p>

4	Delete.	The Reverend Canon Dr Chris Sugden	Not accepted.
	Replace with provision for all office holders to hold parsonage house as corporation sole.	The Reverend Jonathan Baker	Not accepted.
	Amend clause 4(2) to allow waiving of right to housing only if alternative provision made.	Mr Clive Scowen	Not accepted.
	Retain freehold in parsonage for incumbents, with statutory tied lease for other clergy.	Mr Clive Scowen	Not accepted.
	Clarify duty of parsonages board to house parochial clergy only.	Professor David McClellan	Accepted.
5	Delete.	The Reverend Jonathan Baker The Reverend Canon Dr Chris Sugden	Not accepted.
	'Diocesan parsonages boards' should be renamed 'parsonages boards'.	The Reverend Canon Robert Cotton #	Accepted.
	Parsonages boards should be separate legal entities from diocesan boards of finance.	Mr Clive Scowen	Accepted.
	Give parsonages boards power to oversee glebe property.	Worcester diocese	Accepted.
6	Delete.	The Reverend Jonathan Baker The Reverend Canon Dr Chris Sugden	Not accepted.
	Specify duty to house part-stipendiary office holders.	The Venerable Clive Mansell	Covered by changes to clause 4.
	Parsonages board should have duty to oversee house-for-duty housing.	The Reverend Paul Benfield	Covered by changes to clause 4.
	Extend housing entitlement to stipendiary lay office holders.	Mr Clive Scowen	Accepted.

7	<p>Delete.</p> <p>Parsonage house should remain vested in corporation sole.</p> <p>Create 'tenancy' between corporation sole and priest on common tenure.</p> <p>Reconsider automatic vesting of parsonage houses in parsonages boards free of trusts in favour of incumbent or benefice.</p> <p>Clarify date of vesting in event of vacancy.</p> <p>Team rectors should have right to opt in to common tenure, as for other incumbents. Parsonage house should not vest automatically in parsonages board.</p> <p>Vest housing for vicars in team ministries in parsonages boards.</p>	<p>The Reverend Jonathan Baker The Reverend Paul Benfield Dr Graham Campbell Mr Jim Cheeseman Dr Philip Giddings The Venerable Alistair Magowan The Venerable Norman Russell Mr Clive Scowen The Reverend Canon Dr Chris Sugden The Reverend Stephen Trott Mrs Ruth Whitworth Birmingham diocese</p> <p>English Clergy Association Patrons (generally)</p> <p>Dr Graham Campbell</p> <p>The Venerable Clive Mansell</p> <p>Amicus/Unite</p> <p>Mr Clive Scowen</p> <p>Worcester diocese The Reverend Canon Simon Killwick</p>	<p>Not accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Accepted.</p> <p>Accepted.</p> <p>Accepted.</p>
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8	<p>Delete.</p> <p>Consent of office holder should be required under clause 8(2).</p> <p>Consultation under clause 8(2) should include PCC.</p> <p>Consultation under clause 8(2) should include patron.</p>	<p>The Reverend Jonathan Baker The Reverend Canon Dr Chris Sugden</p> <p>Dr Philip Giddings</p> <p>English Clergy Association</p> <p>English Clergy Association</p>	<p>Not accepted.</p> <p>Covered by changes to regulated transaction regime under clause 9.</p> <p>Not accepted.</p> <p>Accepted in case of regulated transactions.</p>
9	<p>Delete.</p> <p>Bring alterations and improvements within regulated transaction regime.</p> <p>Extend regulated transaction regime to cover improvements.</p> <p>Amend clause 9(3) to give all office holders right of veto over sale or exchange of their housing.</p> <p>Right to appeal in housing-related disputes should be included in Measure and not Regulations.</p> <p>Remove qualification requirement for diocesan surveyors under clause 9(6)(b).</p>	<p>The Reverend Jonathan Baker The Reverend Canon Dr Chris Sugden</p> <p>The Reverend Paul Ayers</p> <p>The Reverend Jonathan Clark Amicus/Unite</p> <p>The Reverend Paul Benfield</p> <p>Mr Clive Scowen</p> <p>Worcester diocese</p>	<p>Not accepted.</p> <p>Accepted.</p> <p>Accepted.</p> <p>Not accepted.</p> <p>Not accepted.</p> <p>Accepted in case of existing diocesan surveyors.</p>
10	<p>Delete clause 10(4) allowing approval of codes of practice by 'deemed' procedure.</p> <p>Provide expressly for Church Commissioners' involvement in preparing parts of codes relating to objections to proposed dealings in see houses.</p>	<p>Dr Philip Giddings Amicus/Unite</p> <p>Mr Timothy Walker</p>	<p>Not accepted.</p> <p>Not accepted.</p>

	Synod should see draft codes before final approval of Measure. Include statutory provision for consultation with housing providers before approval of housing-related code by Synod.	The Venerable Clive Mansell Worcester diocese	Not accepted. Not accepted.
11	Clause 11(6) contrary to case law. Application of clause 11(5) needs clarification.	Amicus/Unite English Clergy Association	Not accepted. Not accepted.
12	No substantive amendments proposed.		
13	Narrow scope of clause 13(1). Clause 13(1) should be time-limited.	Mr Clive Scowen English Clergy Association Mr Robert Higham #	Not accepted. Accepted.
14	No substantive amendments proposed.		
15	Amend clause 15(1) to refer to 'Ecclesiastical Offices (Abolition of Freehold and Terms of Service) Measure'.	The Reverend Paul Benfield	Withdrawn.

Schedule 1 – Constitution and Functions of Parsonages Boards

1-19	Delete.	The Reverend Jonathan Baker	Not accepted
7	Define functions of parsonages board more closely.	Mr Robert Higham #	Accepted.
10	Delete.	The Reverend Paul Ayers #	Accepted.
19(2)	Delete.	The Reverend Paul Ayers #	Accepted.

Schedule 2 – Further Provisions Relating to Parsonage Houses and other Houses of Residence

1-3	Delete.	The Reverend Jonathan Baker Mr Clive Scowen	Not accepted.
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3	Strengthen.	English Clergy Association	Superseded by decision to separate PB and DBF.
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Schedule 3 – Matters Relating to Regulated Transactions

1-2	Delete.	The Reverend Jonathan Baker	Not accepted.
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Schedules 4 and 5 – Amendment of Enactments / Repeals

	No substantive amendments proposed.		
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Part two

Draft Ecclesiastical Offices (Terms of Service) Regulations

Paragraph of revised draft Regulations (GS 1638A)	Summary of submission	Submitted by	Committee's decision
1-2	No substantive amendments proposed.		
3	Bishop should present written statement of particulars of office.	The Reverend Paul Benfield	Not accepted.
	Respondent before employment tribunal should be bishop or other diocesan functionary, not DBF.	English Clergy Association	Not accepted.
	Define qualification to entitlement to parochial fees under (5)(d).	The Reverend Stephen Trott	Not accepted.
4-6	No substantive amendments proposed.		
7	Relevant documentation should be made available on Church of England website.	Amicus/Unite	Accepted.
	Less reliance should be placed on the internet and electronic communication.	English Clergy Association	Not accepted.
8	No substantive amendments proposed.		
9	Mode of application to employment tribunal (i.e. through form ET1) should be specified.	Amicus/Unite	Not accepted.
10	Amend to provide for recovery of unauthorised deductions from stipend.	Amicus/Unite	Not accepted.
11	Entitlement to stipend should apply to part-time stipendiary office holders.	The Reverend Paul Benfield *	Accepted.
	Amend to specify how regulation is to be enforced in event of dispute.	Mr Bill Nicholls	Not accepted.
12	Obligation of housing provider to pay recurring charges under 12(1)(d) requires clarification.	Canon Harry Marsh #	Accepted.
	Housing provider should be obliged to make good consequential losses.	English Clergy Association	Not accepted.

	Responsibility for repairs under 12(2)(c)(iii) should be limited to fixtures and fittings provided by the relevant housing provider.	The Reverend Paul Benfield	Accepted.
13	Clarify that rights of entry apply only in relation to contents provided by the housing provider.	English Clergy Association	Accepted.
14	Cases of serious misuse of property by cleric should be kept on record.	The Reverend Canon Hugh Atherstone	Not accepted.
	Clarify provision in relation to garden under 14(1)(b).	English Clergy Association	Not accepted.
	Damage under 14(1)(d) should be assessed by independent surveyor.	English Clergy Association	Not accepted.
	Amend 14(1)(e) to allow use of house for such purposes as bed & breakfast and taking in lodgers.	The Reverend Paul Benfield	Not accepted.
	Minor repairs should be excluded from 14(1)(f).	English Clergy Association	Not accepted.
	Entitlement under 14(2) for household of deceased office holder to stay on in house of residence should be extended to six months.	Amicus/Unite	Not accepted.
	Period of entitlement under 14(2) should be specified as rent-free.	Mr Robert Higham # English Clergy Association	Not accepted.
	Similar provision to that under 14(2) should be made for deserted clergy spouses and families.	Worcester diocese	Not accepted.
	Express provision needed for house of residence to be let in vacancy for periods of less than six months.	Worcester diocese	Accepted.
15	Extend formal arbitration procedure to cover clause 8 disputes under the Measure.	Mr Nick Richens #	Accepted.
16	Amend to give office holder right of veto rather than objection.	The Reverend Paul Benfield Mr Clive Scowen	Not accepted.

17	Electronic mail inadequate for service of notices.	English Clergy Association	Not accepted.
18	Dioceses should be obliged to have formal MDR schemes.	The Reverend Dr John Hartley	Accepted.
	Amend to spell out what MDR involves.	The Reverend Paul Benfield	Not accepted.
	Diocesan MDR arrangements should be nationally accredited.	The Reverend Dr John Hartley	Not accepted.
	MDR should be optional. Duty to cooperate should be deleted.	English Clergy Association	Not accepted.
	Duty of office holder to cooperate in MDR should be subject to reviewer also undertaking MDR.	The Reverend Dr John Hartley	Not accepted.
	Reviews should be annual.	Amicus/Unite	Not accepted.
Archbishops should be required to undertake MDR at least every two years.	The Reverend Jonathan Clark *	Accepted.	
19	Include provision that continuing ministerial education (CME) should be relevant to needs of office holder agreed at MDR.	Amicus/Unite	Not accepted.
	Participation in CME agreed as part of MDR should be required of office holder; participation in other CME should be optional.	The Reverend Dr John Hartley	Not accepted.
	Amend to provide for CME to be appropriate to the office holder.	Canon Harry Marsh #	Accepted.
	Provision should be made for time off to undertake CME.	English Clergy Association	Not accepted.
20	No substantive amendments proposed.		
21	Delete.	The Reverend Paul Benfield	Not accepted.
	Define 'principal Feasts'.	The Reverend Stephen Trott	Not accepted.
	Amend to allow occasional Sundays off.	English Clergy Association	Not accepted.

22	Specify how duties to be covered during annual leave.	The Reverend Paul Benfield	Not accepted.
	Existing canonical provision for three months' annual absence for incumbents should be retained.	English Clergy Association	Not accepted.
	Annual leave should be agreed in advance with person nominated for purposes of Regulation 3.	Mr James Humphery	Not accepted.
	Clarify entitlement to statutory holidays.	Mr Bill Nicholls	Accepted.
	Clarify how many Sundays can be taken as annual leave.	Mr Bill Nicholls The Reverend Stephen Trott	Not accepted.
	Specify whether weekly rest period can be added to period of annual leave.	The Reverend Stephen Trott	Not accepted.
	Specify a number of Sundays that must be taken as annual leave.	Amicus/Unite	Not accepted.
	Clarify leave entitlement for part-time stipendiary office holders.	Amicus/Unite	Accepted.
	Express provision should be made for clergy sabbaticals.	Mrs Mary Johnston #	Not accepted.
Specify minimum period of special leave for removal and resettlement.	Amicus/Unite	Not accepted.	
23	Amend to provide that rights for office holders should be at least equivalent to minimum standard for employees.	Amicus/Unite	Not accepted.
	Office holders should have absolute entitlement to stipend during periods of maternity, paternity, parental and adoption leave.	English Clergy Association	Not accepted.
24	Tighter definition of 'charity' needed.	Mr Bill Nicholls	Accepted.
	Remuneration received should be factor included under 24(2).	Dr Philip Giddings	Accepted.

	Bishop not necessarily best placed to determine disputes on time spent on public duties under 24(3).	Amicus/Unite	Not accepted.
	Disputes should be referable to national panel and not bishop.	English Clergy Association	Not accepted.
	Provision should be included for mediation in case of dispute.	English Clergy Association	Not accepted.
	Broaden definition of public duties under 24(4).	The Reverend Jonathan Clark	Not accepted.
	Work for mission societies should be acceptable public duty under 24(4).	Patrons Consultative Group	Not accepted.
	Clarify status of Synod membership under regulation.	The Reverend Paul Benfield The Reverend Stephen Trott	Not accepted.
	Clarify status of school governorship under regulation.	The Reverend Paul Benfield Mr Bill Nicholls	Not accepted.
	Clarify status of patronage trust membership and speaking at non-charitable events under regulation.	Church Society Trust	Not accepted.
	Amend to include time off for trade union training.	Amicus/Unite	Not accepted.
25	Right to attend antenatal classes should be extended to spouses.	Amicus/Unite	Not accepted.
	Regulation should be extended to cover all visits to health and other professional advisers.	English Clergy Association	Not accepted.
26	No substantive amendments proposed.		
27	Notification under 27(1) should be on third day of absence, not first.	The Reverend Jonathan Baker Dr Philip Giddings	Not accepted.
	First seven days of illness should be self-certified, with telephone notification on first day.	Mr Bill Nicholls	Accepted.

	Clarify meaning of 'unable to perform the duties of his or her office'.	The Reverend Stephen Trott	Not accepted.
	Bishop as well as nominated officer should be notified. Responsibility for arranging sickness cover should lie ultimately with bishop.	The Reverend Dr John Hartley	Not accepted.
	Amend 27(3) to clarify application to sickness absence only.	The Reverend Paul Benfield	Accepted.
	Requirement on office holder in 27(3) to arrange own cover in event of illness unfair.	The Reverend Paul Ayers	Not accepted.
	Diocesan discretion over payment of sick pay beyond end of statutory period should be retained.	Worcester diocese English Clergy Association	Not accepted.
28	Provision should be included requiring office holders to authorise release of medical records.	Mr James Humphery	Not accepted.
29	Restriction on full-time working over age 70 should be removed.	Amicus/Unite	Not accepted.
	Common tenure undermined by including scope for fixed- and limited-term appointments.	Amicus/Unite	Not accepted.
30	Compensation provisions in 30(2) over-generous.	Exeter diocese Guildford diocese	Not accepted.
	Compensation provisions in 30(2) inadequate.	Amicus/Unite	Not accepted.
	Period of three years specified in 30(3) too short.	The Venerable Richard Atkinson The Venerable Jonathan Greener	Accepted.
	Period of three years in 30(3) should be extended to five.	The Right Reverend Christopher Hill Worcester diocese	Accepted.
	Period specified in 30(3) should be extendable.	Exeter diocese Guildford diocese Worcester diocese	Not accepted.

	Compensation under Schedule 4 of Pastoral Measure 1983 should be limited to four years.	The Venerable Richard Atkinson	Not accepted.
31	Possibility of recourse to 'deemed procedure' under 31(7) should be removed. More prescription required on content of capability procedure. Matters not mentioned in ordinal should be excluded from capability procedure. Provision should be included to address cases of pastoral breakdown.	The Reverend Dr John Hartley Amicus English Clergy Association The Reverend Paul Benfield Mr Nick Richens #	Not accepted. Not accepted. Not accepted. Not accepted.
32	Responsibility of Archbishops' Council under 32(4) should be strengthened by deletion of words 'endeavour to'.	The Reverend Dr John Hartley	Not accepted.
33	Replace with provision for access to 'ecclesiastical office holder's tribunal'. Remove exclusion on office holders above statutory retirement age from provisions of regulation.	Mr Clive Scowen English Clergy Association	Not accepted. Not accepted.

Part three

Draft Amending Canon No. 29

Paragraph of revised draft Amending Canon (GS 1639A)	Summary of submission	Submitted by	Committee's decision
7	Delete.	Mr Clive Scowen	Not accepted.

Appendix III**Destination tables****Part one****Draft Ecclesiastical Offices (Terms of Service) Measure**

GS 1637 (as at First Consideration)	GS 1637A (as amended by the Revision Committee)
1(1)(a)–(c)	1(1)(a)–(c)
1(1)(d)–(f)	1(1)(d)
1(1)(e)	1(1)(e)
1(1)(g)–(i)	1(1)(f)–(h)
1(1)(i)–(iii)	1(1)(i)–(iii)
1(2)–(5)	1(2)–(5)
2–3	2–3
4(1)–(2)	4(1)–(2)
-	4(3)
4(3)–(7)	4(4)–(8)
5(1)	-
-	5(1)–(2)
5(2)	5(3)
5(3)	-
-	5(4)–(5)
6	6
7(1)–(2)	7(1)–(2)
-	7(3)–(4)
7(3)–(4)	7(5)–(6)
8(1)–(2)	8(1)–(2)
8(3)	-
-	8(3)
9–12	9–12
13(1)–(2)	13(1)–(2)
-	13(3)
13(3)–(9)	13(4)–(10)
14–15	14–15

Schedule 1

1–6	1–6
7	7(1)
-	7(2)
8	8(1)
-	8(2)–(3)
9	9
10–12	-
13–18	10–15
19(1)	16
19(2)	-
-	17

Schedule 2

1-2	1-2
3	-

Schedule 3

1-2	1-2
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Schedule 4

-	1-2
1-7	3-9
-	10(a)
8	10(b)
-	10(c)-(d)
9-25	11-27

Schedule 5

Repeals 1-4	Repeals 1-4
-	Repeal 5
Repeals 5-8	Repeals 6-9

Part two**Draft Ecclesiastical Offices (Terms of Service) Regulations**

GS 1638 (as at First Consideration)	GS 1638A (as amended by the Revision Committee)
1-10	1-10
11(1) and (2)	11(1) and (2)
-	11(3)
11(3)	11(4)
12-17	12-17
18(1)-(5)	18(1)-(5)
18(6)	-
19-21	19-21
22(1)-(6)	22(1)-(6)
-	22(7)
23	23
24(1)	24(1)
24(1)(a)-(c)	24(1)(a)-(c)
-	24(1)(d)
24(3) and (4)	24(3) and (4)
25-28	25-28
29(1)(a)-(f)	29(1)(a)-(f)
-	29(g)
29(2)-(8)	29(2)-(8)
30-33	30-33

Part three

Draft Amending Canon No. 29

GS 1639 (as at First Consideration)	GS 1639A (as amended by the Revision Committee)
1-12	1-12

Part one

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

Revised December 2007

1 INTRODUCTORY

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 office holders 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 they 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 office holder 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 expectation that he or she will be able to recover and restore their ministry and, only where recovery proves impossible, to remove them 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.
3. It should not be assumed that evidence of conflict in a parish, or a fall in congregational numbers, or a failure of the congregation to pay the parish share or the non-achievement of agreed objectives would always be sufficient in themselves to justify instigating the capability procedure. In such cases, further examination may often reveal specific areas where the office holder needs to improve his or her performance, but can sometimes demonstrate that the situation has come about for reasons unrelated to the office holder's capability.

2 GENERAL

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 office holders are falling below an accepted minimum standard.
4. The principal objective of a capability procedure is 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.
5. It is not an opportunity to place additional demands on office holders 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. Following good practice from the start can help to avoid such a mismatch, for example 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. It is not intended to deal with issues amounting to misconduct under the Clergy Discipline Measure 2003. If, therefore, 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 will not 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 of last resort.
12. Legally, ill health is a capability issue and must be dealt with under this procedure if there is a possibility that it might lead to dismissal. See Section 6.

Basic principles

13. The procedure is based on the following principles:
 - a) The procedure must not be used in response to complaints that are found to be frivolous or unsubstantiated;
 - b) The primary purpose of the procedure is to find a way of helping the office holder to improve an unsatisfactory performance;
 - c) the procedure should be carried out in a way that is fully in accord with the requirements of natural justice;
 - d) proper human resource advice should be taken at every stage;
 - e) the office holder should have full opportunity to respond to all points made;
 - f) a panel should be involved at every formal stage, not a single individual;
 - g) sufficient notice should be given in advance of any appearance before a panel;
 - h) the office holder should have the right to be supported by a trade union representative or a lay or ordained colleague in the Church of England;
 - i) sanctions will only be imposed if the office holder has not reached the specified level of improvement;
 - j) there should be a right of appeal at every formal stage;
 - k) meetings to resolve matters should be held as soon as reasonably possible after the issue has been raised and the evidence gathered, in order to minimise the level of anxiety experienced by those involved; and
 - l) the bishop should ensure that appropriate pastoral support and care is provided for office holders undergoing the procedure.
14. 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 dissatisfaction 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.

15. 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. Nevertheless, office holders and

complainants should be aware that confidentiality and anonymity are not, and cannot be, guaranteed.

16. The human resource adviser must be present at each stage of the formal procedure.
17. At all formal stages, if the office holder concerned wishes to bring a colleague or union representative to any meeting, he or she may do so.
18. 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'.

3 BEFORE INVOKING THE FORMAL PROCEDURE

Issues to consider before starting the procedure

19. It is important not to undervalue the diversity of talents that people bring to ministry. It should not be assumed that everyone will be good at everything. Sometimes an office holder's capability may be subject to question, not because they are unable to do the job, but because the questioner has made assumptions (for example, about what constitutes appropriate behaviour for a particular gender) or because the office holder's cultural upbringing or ethnic background is different from that of the majority. Those operating the procedure need to take account of the possible impact of such differences and how they may best be handled.
20. Sometimes a capability issue will arise, not because someone is ill-suited for ministry, but because they are in the wrong post. However, it is important not to jump to premature conclusions that the office holder will never be able to carry out the requirements of the post to an acceptable standard. The emphasis must be on how they need to improve their performance and what action can be taken to equip them to carry out the requirements of the post.
21. When assessing capability, it is important to review the role description and any recently set objectives in order to check whether the reason for questioning the capability of the office holder is that expectations are unclear or unrealistic.
22. Ministerial Development Review (MDR) is a requirement under the Ecclesiastical Offices (Terms of Service) Regulations 200.... This review is the regular opportunity for discussing with an office holder 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. Although MDR may identify areas where the office holder can improve, it will only be in the rare number of cases where the performance is below the acceptable standard and action to bring the performance up to an acceptable standard has not resulted in sufficient improvement that there is a capability issue.
23. This means that MDR must not be used as a substitute for the capability procedure: if there is an issue of capability, it is necessary to go through the initial stages of the procedure, and make it clear to the office holder that their performance is not of an acceptable standard, and that the formal procedure will be activated unless their performance improves. That said, it would be open to question whether the capability procedure had been properly followed if the written record of the MDR did not provide evidence that issues about performance and the need to improve had been raised with the office holder.

24. In the course of an investigation, it may emerge that the substance of the matter is indicative of a disciplinary rather than a capability issue. In such cases, the capability procedure will stop and the matter will proceed under the Clergy Discipline Measure.
25. It may be appropriate to discuss these issues with a human resource adviser before taking further action.

Establishing whether there is a capability issue

Collecting evidence

26. The bishop shall appoint someone ('the appointed person') to run the capability procedure. It will usually be the archdeacon unless the bishop has good reason for determining otherwise. 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.
27. 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.
28. The appointed person will collect information about the issue(s). 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. The procedure must not be taken further if the report that originated it is found to be vexatious or unsubstantiated.
29. 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

30. If the appointed person decides to take the matter further, he or she, should consult the human resource adviser and 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.
31. 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 particular strengths and gifts, and remember that it is not possible to be good at everything.
32. 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 not a capability problem. 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.

33. If there is a capability issue, the appointed person should
- indicate a commitment to identifying and overcoming shortcomings in the office holder's performance and a willingness to help with remedial measures;
 - 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 (see paragraph 35 below);
 - seek to agree with the office holder a form of action to improve performance; and
 - set a date for reviewing progress.
34. 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.

Helping to improve performance

35. In some cases, a timely offer of help or advice can resolve an issue before it becomes acute or leads to pastoral breakdown. Ways of helping an office holder improve their performance include:
- training;
 - counselling;
 - altering working arrangements;
 - a period of additional leave;
 - conciliation and mediation;
 - mentoring (appointing someone under the authority of the appointed person to provide regular monitoring and supervision to help the office holder to meet the improvements set);
 - exploring the possibility of transferring the office holder to other work, although this cannot be guaranteed;
 - suggesting that the office holder may wish to have an interview with the Clergy Appointments Adviser, who will be able to offer confidential advice about the office holder's abilities and help them consider whether it might be appropriate to explore the possibility of finding an alternative post. (This suggestion needs to be offered with sensitivity, and in a way that does not imply any prejudgement that the office holder will not be able to carry out the duties of the current post.)

Review of progress

36. After the agreed interval, the appointed person consults the human resource adviser. The appointed person then 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

37. If the office holder's performance has not improved, the appointed person must alert the office holder in writing that their 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 ('the informal warning') 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.
38. 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, and the informal warning and notes of the meeting are placed in a sealed envelope in the personal file. This envelope must only be opened by the human resource adviser or the archdeacon, and will only be used if it is necessary to demonstrate that appropriate action had been taken (for example, in the case of a later claim of discrimination).

4 THE FORMAL PROCEDURE

39. 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.
40. From now on, the human resource adviser – who will ensure that the process is properly followed – must be involved at every stage.

Formal procedure – stage one: first formal warning

41. 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.
42. 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 colleague or trade union representative.
43. 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.
44. 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.
45. 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 colleague 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.

46. 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.
47. 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 respond, ask questions, and present information.
48. The office holder's colleague or trade union representative may ask questions and make representations; they may not answer questions on behalf of the office holder.
49. The members of the panel may themselves ask questions.
50. Following the meeting, the capability panel must decide whether or not there is a capability issue. If not, the matter goes no further.
51. If the panel has decided that there is a capability issue, it must then go on to consider whether a warning is justified or not. Before making any decision, the panel should take account of:
 - the office holder's ministry as a whole;
 - the office holder's length of service;
 - actions taken in any previous similar case;
 - the explanations given by the office holder; and
 - whether the intended action is reasonable under the circumstances.
52. 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 in writing. 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 between 3 and 6 months, depending on the nature of the issue);
 - the review date; and
 - any support that will be given to assist the office holder.
53. 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

54. 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.
55. Within 14 days of the end of the period set for improvement in the first formal 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.
56. 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 between 3 and 6 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

57. 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.
58. 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.

5 OTHER ISSUES

Dealing with absence

59. 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. Cases of sickness absence are dealt with in section 6.

Appeals

60. At every stage of the formal procedure, the office holder has the right to appeal to an appeal panel against a capability panel's decision. 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.
61. 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.
62. An office holder may choose to appeal on the ground that:
 - fresh information has come to light; and/or
 - the capability process was not used correctly.

Use of Grievance Procedure

63. It is open to an office holder to invoke the grievance procedure for any other reason than the handling of the capability procedure, but this will not have the effect of suspending the capability procedure, which will continue in place while the grievance is heard.
64. If the grievance is about the handling of the capability procedure, the office holder must use the appeal process above.

Keeping records

65. 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.
66. Records should be treated as confidential.
67. 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.
68. 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. This envelope must only be opened by the human resource adviser or the archdeacon, and will only be used if it is necessary to demonstrate that appropriate action had been taken (for example, in the case of a later claim of discrimination).

Access to an Employment Tribunal

69. 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

70. Where the final capability panel considers that the office holder is unsuitable for his or her current position, and should be removed from it, it is important to continue to provide support and pastoral care. In some cases it might be appropriate to provide career counselling.

Membership of the panels

71. 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.
72. 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.
73. 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

74. 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.
 - (c) Cases of dismissal because of ill health (see section 6 below)
75. 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.

6 INCAPABILITY DUE TO SICKNESS, INJURY OR DISABILITY

76. If the office holder is unable to carry out the requirements of the post as a result of long-term or persistent short-term sickness injury or disability absence, or poor performance is caused by sickness, injury or disability, the law treats this as a capability issue and any eventual dismissal will be on the grounds of capability. So, if the absence or poor performance is serious, in certain cases it may be necessary (after taking specialist advice) to instigate the capability procedure. As in other capability cases, a fair procedure must be followed and clearly documented to demonstrate that every attempt has been made to improve attendance or performance. In cases of long term or persistent sickness absence or poor performance as a result of illness, it may get to the stage when it needs to be made clear to the office holder that, however genuine the health problem, dismissal is a possibility because the duties of the office are not being carried out.
77. The handling of incapability due to sickness or injury needs to be distinguished from other capability issues. The appointed person should take a sympathetic and considerate approach and the needs of the office holder must be borne in mind. In every case there will be different circumstances and varying factors to take into account so the procedure must be applied flexibly, for example by using the shortened procedure. However the basic principles of natural justice must be followed:
- (i) evidence must be gathered;
 - (ii) the postholder must be offered the opportunity to comment;
 - (iii) a warning or the consequences of failing to improve must be given;
 - (iv) help and time must be given to improve;
 - (v) a hearing should be held, if practicable, at which progress is reviewed; and
 - (vi) a formal warning stage with appeal rights must take place.
78. As all cases involving sickness will be different, no specific time limits can be laid down in respect of particular stages of the procedure.
79. When thinking about how to handle these cases it is helpful to consider:-
- a. whether medical advice has been sought or an occupational health referral has been made
 - b. whether, if the Disability Discrimination Act 2005 applies, steps have been taken to make reasonable adjustments to the working environment or the way the role is carried out;
 - c. whether in other cases of sickness absence steps have been taken to make temporary adjustments to the working environment or the way the role is carried out to ease the postholder back to full duties;
 - d. the likelihood of, and timescale for, a resumption of the full range of duties to the required standard;
 - e. whether alternative work outside the Church is available and what support might be required to enable the office holder to obtain such work;
 - f. the effect of the absence on the parish or other area of ministry;
 - g. how similar situations have been handled in the past.
80. In cases of extended sick leave, both statutory and terms of service issues will need to be addressed and specialist advice may be required.
81. 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.

82. In some cases, capability issues may remain, even though all reasonable adjustments have been made and support given. 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. 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 pension 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 the shortened form – see above).

7 CURRENCY OF WARNINGS

83. Except in special circumstances, any disciplinary action taken should be disregarded for capability purposes after a specified period of satisfactory conduct or performance.
84. As recommended by ACAS, different periods can apply for different types of warnings. Warnings should cease to be 'live' following the specified period of satisfactory conduct and should thus be disregarded for future disciplinary purposes.
85. The following times apply.
- Papers which refer to possible formal action as a result of a possible capability issues ('the informal warning') should be placed in a sealed envelope on the personal file if the office holder's performance has demonstrated the necessary improvement.
 - The first written and the second written warning should remain 'live' for 12 months (or more in exceptional circumstances).
86. There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the office holder's disciplinary record should be borne in mind in deciding how long any warning should last.
87. At the point when any warning ceases to be live, the records relating to the capability proceedings should be placed in a sealed envelope on the office holder's personal file. It should be explained to the office holder that the warnings, once spent, will not be used if the procedure has to be reactivated, but that they may be referred to in certain circumstances where it is necessary to demonstrate that appropriate action was taken by the bishop (for example in the event of an appeal to an Employment Tribunal).

Annex – Membership of panels to hear cases and appeals

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.

Office holder	Parochial or cathedral cleric (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

Office holder	Parochial or cathedral cleric (except Dean), including NSMs, OLMs, (stipendiary) readers and other licensed clergy	Dean or Archdeacon	Bishop	Archbishop
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	The 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	The other Archbishop with Prolocutor of other Province, Vicar General of 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 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.

Part two

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

Revised December 2007

INTRODUCTION

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.
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.
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.
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. Reconciliation should be the desired outcome and it is important to consider how mediation and conciliation might be used to bring this about at every stage of the procedure.
5. Mediation should not be seen as committing people in advance to whatever the outcome of the process is, but does require a willingness by all concerned to participate in trying to find a mutually acceptable solution. It may, therefore, be appropriate to draw inferences at a later stage if people refuse to participate in mediation.
6. Attempts should always be made to resolve grievances as swiftly as possible, although it is recognised that, where a number of people are involved, it can take time to gather all the necessary evidence.

Scope

7. This grievance procedure is available to all office holders under Common Tenure.
8. 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.
9. Allegations concerning bullying and harassment are addressed at paragraphs 26-8 of this document.
 10. The procedure may not be used where other forms of appeal or representation are available, or have been exhausted, for example appeals against disciplinary or capability 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.
 11. The Ecclesiastical Offices (Terms of Service) Regulations do, however, provide that, if there is a dispute about the performance of the respective obligations of the relevant housing provider and the office holder which cannot be resolved by the grievance procedures, it shall be referred for arbitration by a single arbiter appointed by agreement between the relevant housing provider and the office holder, or, failing agreement, by the President of the Royal Institution of Chartered Surveyors; and the decision of any arbiter so appointed shall be final.
 12. This procedure may be invoked by an individual undergoing a capability procedure, but that procedure will not be suspended while the grievance is considered. If the grievance relates to the handling of the capability procedure, the appeal process should be used rather than this procedure.

Informal resolution

13. 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.
14. Once a grievance has been raised, it is vital to try and address the office holder's concerns as promptly as possible. A swift response demonstrates that the grievance is taken seriously, and can sometimes nip a difficult situation in the bud.
15. If action has not been taken to attempt to address the grievance after 28 days, the office holder is able to make the grievance formal. However, this deadline may be extended by mutual agreement between the office holder and the person with whom he or she has raised the grievance.

THE FORMAL PROCEDURE

16. If an informal approach proves incapable of resolving the grievance, or it has not been resolved within the agreed deadline, then the formal Grievance Procedure set out below may be invoked by the office holder.

Stage one

17. The office holder must set out the grievance in writing, including (a) what remedies he or she might find acceptable as routes to a resolution and (b) details of any informal steps that have been taken to try and resolve the matter. He or she should send the statement to the archdeacon unless the archdeacon is directly concerned. In this case, the matter should be referred to the diocesan bishop, who has ultimate responsibility for ensuring that the grievance is heard .

Stage two

18. 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.
19. 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. This meeting should be held as soon as possible, and within a maximum of 28 days after the archdeacon has received the grievance in writing, although this deadline can be extended by mutual agreement. An office holder has the right to be accompanied at the meeting as described at paragraph 29 below.
20. 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. That third party also has the right to be accompanied.
21. 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.
22. 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

23. 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. This meeting should be held as soon as possible, and within a maximum of 28 days after the archdeacon has been informed that the office holder wishes to take the matter to stage 3, although this deadline can be extended by

mutual agreement An office holder has the right to be accompanied at the meeting as described at paragraph 29 below, as does any third party attending.

24. 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

25. 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

26. It is expected that all dioceses should have a policy to deal with bullying and harassment.
27. Where the grievance involves the alleged bullying by a third party, the diocesan anti-bullying and harassment policy 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.
28. If allegations are referred to the archdeacon which concern repeated physical, verbal or emotional bullying by a person in holy orders, then the archdeacon may take the view that the matter should properly be dealt with under the Clergy Discipline Measure 2003. In this case, he or she may stay the formal procedure to allow a complaint under that Measure to be made. If the allegations do not appear to the archdeacon to be of sufficient gravity to warrant a complaint of misconduct, or if the alleged bullying was carried out by a lay person, who is not subject to the Clergy Discipline Measure, then before taking the formal procedure further the archdeacon shall seek the consent of the office holder before contacting the other party. The third party is entitled to be accompanied at any meeting to discuss the allegations as described below.

Right to be accompanied

29. Office holders and third parties have the right to be accompanied **at all meetings** concerning the grievance by a trade union official or a colleague (lay or ordained within the Church of England).

Keeping records

30. 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.
31. Records should be treated as confidential and kept securely.

Part three

**CURRENT DRAFT GUIDELINES FOR MINISTERIAL DEVELOPMENT REVIEW
(KNOWN AS THE MDR PRINCIPLES) PROVIDED FOR ILLUSTRATION**

Revised December 2007

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, priests and bishops, but 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 (THE MDR PRINCIPLES)

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, including those with the freehold. 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. 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. It is useful to try and make these as clear as possible. Input from others may be required.
12. 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.

13. 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 they have been 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.
14. 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. These views on performance in relation to role and planned objectives should have a developmental focus and may usefully include reference to specific ministerial skills identified for particular comment. 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.
15. The MDR process might usefully include a specific section on ministerial skills, which are often identified through the feedback from the lay representatives. Where people have particular skills these could be identified for particular comment, not just in terms of offering affirmation and encouragement to the cleric concerned, but also when appropriate to recommend that these skills be made more widely available within, say, a deanery or within the diocese.
16. A written summary of the MDR will be made by the reviewee or the reviewer. The minimum information to be recorded will be:
 - (i) Date;
 - (ii) Reviewer, reviewee;
 - (iii) Review of past objectives or priorities and completion / movement towards them;
 - (iv) New objectives or priorities;
 - (v) Any changes to the role description
 - (vi) Relations with others;
 - (vii) CME needs;
 - (viii) Summary of input from lay people and colleagues and reviewee's response to this;
 - (ix) A note of particular ministerial skills that might be made more widely available;
 - (x) Anything else the reviewee would like to mention.

The reviewee ideally should be involved in the writing of the summary, and, as a minimal requirement must be given an opportunity to see the written summary. 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 on when there is any change of diocese) and for a note of the development needs to be passed to the CME officer.

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17. 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.
 18. 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.

1. These two recent decisions have provided some useful clarification and development of the case law relating to the employment status of ministers of religion. It is important to note that neither of these cases related to a minister of the Church of England, and also that neither resulted in any finding that ministers of religion in general, or in the Church of England in particular, are employees in law.
2. In *Percy*, the House of Lords had to consider whether a minister of the Church of Scotland was entitled to bring a claim under the sex discrimination legislation. This legislation does not require the claimant to be an employee, as it also extends to those working under a contract for services (independent contractors). The House of Lords affirmed the existence of common law offices, and accepted that an office holder may work under a contract, although this will not necessarily be so in every case. On the particular facts, it was held that the terms and conditions on which Ms Percy held office amounted to a contract for services.
3. The House of Lords reviewed and questioned a series of older cases which had established a presumption that, where a minister of religion was appointed, the parties did not intend to create a legally binding relationship. This presumption has now, effectively, been overruled. But this creates no difficulty as far as the present draft legislation is concerned – indeed, its primary purpose is to put the terms and conditions of service of clergy and certain lay office holders on a clearer and more equitable legal footing.
4. Following the decision in *Percy*, the Court of Appeal were asked to consider whether an ordained minister in the New Testament Church of God held office under a contract of employment and was therefore entitled to bring a claim for unfair dismissal in an employment tribunal. On the facts, it was held that Mr Stewart was an employee. However, the Court was at pains to emphasise that this decision involved no general finding that ministers of religion were employees. An analysis of the specific facts of each case was needed before reaching a conclusion, and it was accepted that those facts would vary as between different religions and different churches.
5. In the view of the Revision Committee, these cases have in no way superseded the need for the present draft legislation. On the contrary, they have, if anything, strengthened the argument for a clearer statutory framework which will preserve the office-holder status of clergy and stipendiary lay ministers while affording them rights equivalent to those enjoyed by employees. Once these statutory terms and conditions of service are in place, courts and tribunals will be bound to make decisions which are consistent with them. This will promote greater clarity and certainty for all concerned.

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