

GENERAL SYNOD

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE

REPORT OF THE STEERING COMMITTEE OF MEMBERS IN CHARGE

Chair: **The Right Reverend Stephen Venner (the Bishop of Dover)**

Members: **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)
 Mr Geoffrey Tattersall QC (Manchester)

1. The draft Ecclesiastical Offices (Terms of Service) Measure, draft Ecclesiastical Offices (Terms of Service) Regulations and draft amending Canon No 29 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.
2. The draft legislation was committed to a Revision Committee. At the February 2008 group of sessions the Synod took note of the Report of that Committee (GS 1637-9Y) and completed the Revision Stage for the draft legislation. The draft legislation then stood committed to the Steering Committee under Standing Order 59(a) in respect of its Final Drafting. However, as was explained at the conclusion of the debates in February, only the draft Measure is being returned to the Synod at this group of sessions. Once the Measure has completed its passage through Parliament and received the Royal Assent, the intention is that the regulation-making power in clause 2 should be brought into force at an early date, and at that stage the draft Regulations and the draft Amending Canon will be brought back to the Synod.
3. The Steering Committee ("the Committee") has met once since February and has conducted its remaining business by correspondence under Standing Order 59(f). It now returns the draft Ecclesiastical Offices (Terms of Service) Measure (GS 1637B) to the Synod for Final Drafting and Final Approval. Appendix II to this report contains destination tables which relate the provisions in this version of the draft Measure to those in the version of the draft Measure which was before the Synod in February 2008.
4. Under Standing Order 59, at Final Drafting Stage the Steering Committee may propose 'Drafting Amendments' or 'Special Amendments' or both. These two categories of amendments are defined in SO 59(g) as follows –
 - (i) a Drafting Amendment means an amendment where only the wording of the Measure is altered and not its substance; and
 - (ii) a Special Amendment means an amendment considered necessary or desirable by the Steering Committee because the Measure is not sufficiently clear or because

some other criticism not considered by the Synod or any Revision Committee has been brought to the notice of the Steering Committee.

The amendments proposed by the Committee under that Standing Order are dealt with in paragraphs 5-7 below.

Drafting Amendments

5. A number of Drafting Amendments are required as a result of decisions made by the Synod in February 2008 – in particular, the decision not to transfer the legal title in parsonage houses to diocesan parsonage boards. In addition, one of the purposes of the Final Drafting Stage is to allow for a final scrutiny of the draft legislation before it comes to the Synod for Final Approval, and the need has been identified in this case for some minor corrections, which the Committee agreed to address by way of Drafting Amendments.
6. The Committee has therefore agreed the Drafting Amendments to the draft Measure which are set out in Appendix I to this report, and which are shown in bold type in GS 1637B.

Special Amendments

7. The Committee gives notice of the following Special Amendments to the draft Measure.

Clause 3

- (i) **In clause 3(3)(d), for the words “following a finding of misconduct under” substitute “under any provision of”.**

NOTE: The Committee was asked to give further consideration to the wording of this sub-clause because the Clergy Discipline Measure 2003 provides that, in some circumstances, an office holder may be removed from office where there has been no finding of misconduct by a disciplinary tribunal. For example, resignation may be agreed as a penalty by consent under section 16 of the 2003 Measure, or the bishop may impose a penalty of removal from office under section 30 of the 2003 Measure where a sentence of imprisonment has been passed on the office holder or one of certain kinds of matrimonial order has been made against him or her.

The Special Amendment is therefore put forward to address this issue and to ensure consistency between the provisions of the draft Measure and the Clergy Discipline Measure 2003.

- (ii) **At the end of clause 3(4) add “or, in the case of a priest-in-charge appointed to a benefice during a vacancy, when the vacancy comes to an end”.**

NOTE: It was drawn to the Committee’s attention that, by an oversight, there was currently no provision in the draft Measure for the termination of the office of a priest-in-charge where the vacancy in a benefice comes to an end in circumstances other than by the abolition of the benefice under pastoral reorganisation. Such a provision is necessary because, if the office of the priest-in-charge were to continue, it would be impossible (notwithstanding the lifting of any period of suspension) for an incumbent then to be appointed through the statutory appointment processes. That was never the intention of the draft legislation.

The Special Amendment is therefore put forward to remedy this inadvertent omission. It provides that a bishop may revoke the licence of a priest-in-charge, such revocation to take effect when the vacancy comes to an end.

The Committee gives notice that it intends to bring forward an amendment to the draft Ecclesiastical Offices (Terms of Service) Regulations, when these are returned to the Synod, which will provide that, where the licence of a priest-in-charge is terminated under this provision, he or she will be entitled to compensation under Regulation 30 on the same basis as if the office had been abolished by way of pastoral reorganisation – i.e. compensation calculated in accordance with Schedule 4 to the Pastoral Measure 1983, but limited to one year's loss of office. Such compensation would not, of course, be payable where the priest-in-charge is appointed as the incumbent of the benefice or immediately takes up another comparable post.

(iii) In clause 3(10) omit the words “a full-time stipendiary” and substitute “an”.

NOTE: The Committee was made aware that the extension of the statutory retirement age of 70 under clause 3(10) could result in a potentially unfair difference of treatment if, as presently drafted, it was restricted to full-time stipendiary office holders only. The effect would be that those who held a non-stipendiary, house for duty or part-time stipendiary post would be entitled to remain in that office indefinitely after the age of 70, whereas those in full-time stipendiary posts would be obliged to retire and could thereafter only be appointed to an office on a fixed-term basis under Regulation 29(1)(b).

The Committee accepted that this difference of treatment was not consistent with the spirit of common tenure. Nor did it reflect the concerns that prompted the inclusion in the draft Ecclesiastical Offices (Terms of Service) Regulations of Regulation 29(1)(b) – namely, that office holders over the age of 70 ought not to be subject to a capability procedure except where absolutely necessary, but that instead the requirement for a limited-term appointment would enable such office holders to review their position with their bishop and to adjust their working arrangements from time to time as appropriate.

The Committee is therefore putting forward this Special Amendment, which has the effect of applying the statutory retirement age to all office holders on common tenure – all of whom will then also be eligible for appointment to an office on a limited-term basis after the age of 70, if they so wish.

Clause 7

(iv) In clause 7(6)(a)(iii), after the word “parent,” insert “grandchild.”

This Special Amendment is consequential upon the amendment of the definition of “connected person” in the Parsonages Measure 1938 and the New Parishes Measure 1943 made by the Revision Committee for the draft Church of England (Miscellaneous Provisions) Measure, and accepted by that Committee. An explanation of the reasons for the proposal can be found in the Report of the Revision Committee for that legislation (GS1683Y, paragraph 33).

The Committee accepts that the definition of “connected person” in the draft Ecclesiastical Offices (Terms of Service) Measure should be consistent with the definition in other related Church legislation, and therefore brings forward this Special Amendment.

- (v) **In clause 7(6)(b), for the words “for a benefice” substitute “by the Board”, and for the words from “qualified as” to “Schedule 1 below” substitute “who is a member of the Royal Institution of Chartered Surveyors”.**

NOTE: The first part of this amendment (‘for the words “for a benefice” substitute “by the Board”’) is in fact a Drafting Amendment, being purely consequential upon the amendments carried by the Synod in February, and is included here for ease of reference only.

The remainder of the amendment is, like the previous Special Amendment, consequential on a proposal for amendment of related Church legislation accepted by the Revision Committee for the draft Church of England (Miscellaneous Provisions) Measure. An explanation of the reasons for that proposal is set out in GS 1683Y, paragraphs 35 and 36. This Special Amendment is therefore brought forward to ensure consistency.

Other matters considered by the Steering Committee

Incumbent’s veto

8. The Committee considered – as it felt bound to do as a result of a number of speeches in the debates during the Revision Stage in February – whether it should bring forward a Special Amendment seeking to modify the incumbent’s right of veto in respect of dealings with the parsonage house. The Committee had considerable sympathy with the concerns expressed by the speakers in February, especially in relation to the inherent conflict of interest between the incumbent’s personal interests as the occupier of the house and the wider interests of the benefice which the (charitable) corporation sole comprising the incumbent of the benefice for the time being exists to serve. However, the Committee decided that in the light of the decisions taken by the Synod in February it would not be appropriate to bring forward such a significant amendment at the Final Drafting Stage of this Measure, when the only options available to the Synod would be to accept or reject the amendment as proposed.

Pastoral breakdown

9. The Committee also took account of further representations made to it about the future handling of cases which presently fall within the scope of the Incumbents (Vacation of Benefices) Measure 1977 – that is, cases where the incumbent is incapable of performing his or her duties because of ill health, and cases of serious pastoral breakdown.
10. In relation to office holders under common tenure, cases of incapacity due to ill health (which now fall within Part II of the 1977 Measure) could be dealt with under the capability procedure. The Committee also took the view that cases where pastoral breakdown has been caused principally by the conduct of the incumbent would properly be dealt with either under the capability procedure or as a disciplinary matter, depending on the nature and seriousness of the behaviour in question.
11. There will also be cases either where the pastoral breakdown is principally caused by the conduct of parishioners or where the breakdown is nobody’s fault as such, but is caused by a mismatch of expectations or a failure of communication. In relation to the second of these scenarios, the framework of common tenure – especially the requirement for written particulars of office and regular ministerial development review (into which parishioners will have an input) – is intended to reduce the risk of unrealistic expectations or misunderstandings on either side.

12. In cases where the parishioners are at fault, the Committee accepted that the limited sanctions that the 1977 Measure affords – disqualification as a churchwarden or member of the PCC for a maximum of 5 years – would no longer be available in relation to clergy on common tenure. However, the Committee felt that the desirability of having some redress against lay people in these circumstances was not in itself sufficient justification for retaining the 1977 Measure and applying it to office holders under common tenure. The procedures under the 1977 Measure are lengthy, adversarial and costly, none of which, in the view of the Committee, facilitates the healing of fractured pastoral relationships.
13. The Committee therefore endorsed the view already expressed by the Revision Committee in its report (GS1637-9Y paragraph 108) that further work on pastoral breakdown needed to be undertaken, but as a discrete piece of work which would almost certainly go beyond the remit of the terms of service legislation. The Committee would encourage the Archbishops' Council to put that work in hand as soon as possible.

On behalf of the Committee

+ Stephen Venner
7th June 2008

APPENDIX I

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE DRAFTING AMENDMENTS

Clause 3(6)

Omit the words from the beginning to “determined” and **substitute** “Where there has been an adjudication on a matter relating to the performance of an office holder under the capability procedures and a determination”.

Clause 5(1)

Immediately before the word “body” **insert** “person,”.

Clause 6

In clause 6(1), at the beginning **insert** the words “Subject to subsection (4) below,”.

At the end of clause 6 **insert** as a new subsection –

“(4) This section and section 7 below do not apply to a parsonage house vested in an incumbent of a benefice or to any land or buildings to which the powers conferred by section 1 or 2 of the Parsonages Measure 1938 relate.”.

Clause 7

At the beginning of clause 7 **insert** the words “Subject to section 6(4) above,”.

In subsection (1)(c) **omit** the words “a parsonage house or house of residence for a vicar in a team ministry in a benefice or”; for the word “authority” **substitute** “housing provider” and, at the end, **omit** “and”.

Omit subsection (1)(d).

In subsection (2)(a) **omit** the words “, or any change in the designation of a house of residence”.

Omit subsection (2)(c).

Omit subsection (6)(a)(iii).

Omit subsection (10).

Clause 9

In clause 9(1), **omit** the words “by way of proceedings”.

Omit subsection (9).

Clause 10

In subsection (1), **omit** the definition of the 1983 Measure and **omit** the words “or section 5 above” in the definition of “the Board”.

Omit subsection (2).

Clause 11

Omit clause 11(5).

Omit clause 11(6).

Clause 12

Omit clause 12(2).

Schedule 1

In paragraph 1(1) –

- (i) in sub-paragraph (b), for the words “with the consent of” **substitute** “by”;
- (ii) in sub-paragraph (c), for the words “the Commissioners” **substitute** “any person or body, including a loan from the Commissioners under section 7(8) above”;
- (iii) **omit** sub-paragraph (d);
- (iv) in sub-paragraph (e), for “(a) to (d)” **substitute** “(a) to (c)”;
- (v) **omit** sub-paragraph (f);
- (vi) in sub-paragraph (h) for “8” **substitute** “6” and at the end **add** “, provided that priority is given to any requirement for a residence for the holder of the office for which the house of residence was sold or exchanged”; and
- (vii) in sub-paragraph (i), for the words “to which the benefice belongs” **substitute** “in which the house of residence was situated”.

In paragraph 1(3) for “8” **substitute** “6”.

Omit paragraph 1(4).

In paragraph 2(2) for “8” **substitute** “6”.

Schedule 2

Omit paragraph 1.

Omit paragraph 2.

In paragraph 5(a), at the beginning, **insert** “In subsection (2)”.

In paragraph 5(c), at the end **add** “and for the words “incumbent or vicar” substitute “such person””.

In paragraph 6 –

- (i) for sub-paragraph (a) **substitute** –
“(a) In subsection (2), after the words “team ministry” insert “who is not subject to common tenure”;

- (ii) for sub-paragraph (b) **substitute** –
“(b) subsection (3) shall cease to have effect;”;
- (iii) at the end of sub-paragraph (d), **insert** “and”;
- (iv) **omit** sub-paragraph (f).

Omit paragraph 8.

Omit paragraph 10.

In paragraph 11 after “and the words” **insert** “rector or”.

Omit paragraph 12.

Omit paragraph 13.

Omit paragraph 14(a).

In paragraph 22 after “15” **insert** “(1)”.

After paragraph 24 **insert** –

“The Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988

In section 7(1) of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988 (1988 No. 1), for the words “ministers, deaconesses, lay workers and readers” substitute “deaconesses, lay workers and readers who are not subject to common tenure”.

Schedule 3

After the entry relating to the Lecturers and Parish Clerks Act 1844 **insert** the following entry

<p>The New Parishes Measure 1943, 6 & 7 Geo.6 No. 1</p>	<p>In section 13(1)(d), the words “or any other ecclesiastical person”.</p> <p>Section 16(3)(c) and (d)</p>
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Omit all the repeals relating to the Repair of Benefice Buildings Measure 1972.

Omit the repeal of section 24 of the Endowments and Glebe Measure 1976.

In the repeals relating to the Pastoral Measure 1983 **omit** the repeals of section 20(2) and (15) and paragraph 2 of Schedule 4.

Omit the repeal relating to section 7(1) of the Church of England (Legal Aid and Miscellaneous Provisions) Measure 1988.

APPENDIX II

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE

DESTINATION TABLES

GS 1637A (as amended by the Revision Committee)	GS 1637B (at Final Drafting, including drafting amendments)
1-4	1-4
5	-
6(1)(a)	-
6(1)(b)	5(1)
6(2)	5(2)
7	-
8(1)-(3)	6(1)-(3)
-	6(4)
9(1)(a)-(c)	7(1)(a)-(c)
-	7(1)(d)
9(2)(a) and (b)	7(2)(a) and (b)
9(2)(c)	-
9(2)(d)	7(2)(c)
9(3)-(5)	7(3)-(5)
9(6)(a)(i) and (ii)	7(6)(a)(i) and (ii)
9(6)(a)(iii)	-
9(6)(a)(iv)	7(6)(a)(iii)
9(6)(b)	7(6)(b)
9(7)-(9)	7(7)-(9)
9(7)(10)	-
10	8
11(1)-(8)	9(1)-(8)
11(9)	-
11(10)	9(9)
12(1)	10
12(2)	-
13(1)-(4)	11(1)-(4)
13(5) and (6)	-
13(7)-(10)	11(5)-(8)
14(1)	12
14(2)	-
15	13

Schedule 1

1-17	-
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Schedule 2

1-2	-
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Schedule 3**Schedule 1**

1(1)(a)–(c)	1(1)(a)–(c)
1(1)(d)	–
1(1)(e)	1(1)(d)
1(1)(f)	–
1(1)(g)–(i)	1(1)(e)–(g)
1(2) and (3)	1(2) and (3)
1(4)	–
2	2

Schedule 4**Schedule 2**

1 and 2	–
3–5	1–3
6(a)–(e)	4(a)–(e)
6(f)	–
7	5
8	–
9	6
10	–
11	7
12 and 13	–
14(a)	–
14(b)	8
15–24	9–18
–	19
25–27	20–22

Schedule 5**Schedule 3**

Repeals 1 and 2	Repeals 1 and 2
Repeal 3	–
–	Repeal 3
Repeal 4	Repeal 4
Repeal 5	–
Repeals 6–9	Repeals 5–8

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