GS 1806X

DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) (AMENDMENT) (NO.2) REGULATIONS 2010

Explanatory Memorandum

These draft Regulations amend the Ecclesiastical Offices (Terms of Service) Regulations 2009, as previously amended by the Ecclesiastical Offices (Amendment) Regulations 2010 ("the 2009 Regulations"). References to particular Regulations in this Explanatory Memorandum are to the relevant provisions of the 2009 Regulations.

Background

The Ecclesiastical Offices (Terms of Service) Measure 2009 ("the 2009 Measure") and the 2009 Regulations will together put in place a new framework of terms and conditions of service for clergy and certain licensed lay ministers, to be known as 'Common Tenure'. The underlying principle of the legislation is that those who are within its ambit should, in so far as practicable, serve under a common set of terms and conditions which, while preserving the traditional office holder status of the majority of clergy posts, confer on the office holder rights and responsibilities broadly similar to those which apply to employees under the general law. Detailed information about Common Tenure may be found on the website www.commontenure.org .

The legislation is expected to be implemented in full on a date early next year ("the appointed day"). On the appointed day those within the ambit of the legislation who serve under a licence will transfer automatically to Common Tenure, as will the Archbishops of Canterbury and York. Others who hold a freehold office on the appointed day will have the opportunity to opt into Common Tenure, but will not be obliged to do so while they remain in that post.

Earlier this year, questions were raised with the staff of the Terms of Implementation Panel ("the Panel") about the application of the legislation to those clergy who hold the bishop's licence in connection with ministry exercised in pursuance of a contract of employment. This category includes (*inter alia)* prison, education and hospital chaplains, bishops' chaplains and some clergy holding a diocesan post.

In response to these questions the legal team, including Standing Counsel, undertook an analysis and concluded that, when the legislation comes into force, such post-holders will fall within the scope of Common Tenure. The effect of s.1(1) of the 2009 Measure is to designate all those who fall within the ambit of that sub-section as ecclesiastical office holders for the purpose of this legislation, even if the post they hold would not constitute an office under the general law. Since s.1(1)(g) includes any person in holy orders who exercises his or her ministry in accordance with a licence from the diocesan bishop, those clergy who are so licensed in connection with a contract of employment are therefore office holders for the purpose of the Measure.

The consequence is that, as matters stand, the provisions of the 2009 Regulations would apply in their entirety to employed clergy. The Panel took the view that this

was undesirable both in principle and practice - in principle, because the Regulations are designed to confer rights and responsibilities akin to those which already apply to employees under the general law and, in practice, because of the potential for conflict and confusion between the provisions of the 2009 Regulations and the terms of any particular contract. The draft amending Regulations now before Synod are intended to rectify the position.

Paragraph 1 (Citation and coming into force)

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

Paragraph 2 (Exclusion of offices held in pursuance of contracts of employment)

Paragraph 2 amends Regulation 2 in order to provide that the 2009 Regulations shall not apply to an office holder in respect of any office that he or she holds in pursuance of a contract of employment, but without prejudice to any other office he or she may hold.

There was some discussion among members of the Panel as to whether or not Regulations 18 and 19, which require the bishop to make, and office holders to participate in, arrangements for Ministerial Development Review ("MDR") and Continuing Ministerial Education ("CME"), ought to apply to employees as well as to other office holders. The Panel accepted that there were arguments on both sides of the question. On the one hand, the experience of Panel members was that, where employed clergy were encouraged to take part in MDR and CME, many valued this opportunity. Participation enabled them to feel part of the life of the diocese, to explore possibilities for their future ministry, and to meet developmental needs which went beyond the requirements of their employer. On the other hand, Panel members felt it was important that there should be room for flexibility, given the wide variety of employed clergy posts, and that to impose an absolute requirement on bishops to provide MDR and CME in these circumstances would be unduly onerous. On balance, therefore, the Panel took the view that Regulations 18 and 19 should be disapplied. This would not, of course, preclude any bishop from offering MDR and CME to any or all of the employed clergy in his diocese as he considered appropriate – indeed, the MDR Guidelines approved by the House of Bishops recommend this.

The saving for other offices held by the office holder protects those in dual role posts, where the other element in their role is a full Common Tenure office to which the 2009 Regulations apply. The Panel was aware that some employed office holders exercise a 'peripheral ministry' – for example, occasional preaching or Sunday duties in a parish. The view that members of the Panel have taken is that if this ministry is of sufficient substance that the bishop considers that the 2009 Regulations ought to apply to it, it should be the subject of a separate licence. Guidance will be issued to that effect.

The Legal Office, Church House, Westminster October 2010