

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

Appointment of incumbent on non-stipendiary basis

1. The Commission issued an opinion in July 2001 entitled *Clergy: non-stipendiary ministers: appointment as incumbents*. In that opinion the Commission identified a number of legal difficulties that arose where it was proposed to appoint a priest as an incumbent on the basis that he or she would not receive a stipend or any other profits of the benefice.
2. The principal difficulties identified by the Commission in 2001 were:
 - a. that an arrangement under which a priest disclaimed in advance the financial entitlements which would otherwise attach to the incumbency amounted to simony with the result the presentation to the benefice would be void under section 4 of the Simony Act 1588; and
 - b. that an incumbent appointed on a non-stipendiary basis might remain liable for income tax on the income of the benefice even if he or she did not receive that income.
3. Simony includes the buying or selling of an ecclesiastical benefice or admission to a benefice. An agreement by a priest before presentation to give up a claim to some of the emoluments of the benefice is simoniacal: *R v Bishop of Oxford* (1806) 7 East 600. A presentation made in such circumstances is accordingly void under section 4 of the 1588 Act (and the simoniacal act is a criminal and an ecclesiastical offence). See Halsbury's Laws of England (2011) vol. 34, paragraphs 616 and 617.
4. As to income tax, the problem arose from the principle stated in *Reade v Brearley* (1933) 17 TC 687 that "in a large number of cases the voluntary foregoing of a salary due to a person ought to be regarded by the Court ... simply as a being an application of the income and that in such circumstances, the office would not the less be an office of profit and the assessment [of tax] would therefore not the less be made". The Commission noted that this principle was not inexorable and that there were circumstances where a disclaimer of income could be effective for tax purposes but it was impossible to advise with confidence that an incumbent would escape liability to pay tax on the notional income of a benefice which he or she had elected not to receive.
5. The Commission suggested that the matter as a whole could be clarified in the legislation that was expected to follow the review of clergy terms of service carried out in 2003 and 2004.
6. The review of clergy terms of service resulted in the Ecclesiastical Offices (Terms of Service) Measure 2009 which provides for incumbents (and the holders of other ecclesiastical offices) appointed on or after 31 January 2011 to hold office subject to common tenure. The Ecclesiastical Offices (Terms of Service) Regulations 2009,

made under section 2 of the 2009 Measure, make detailed provision as to the terms of service of persons holding office under common tenure.

7. Regulation 3 of the 2009 Regulations requires that an office holder under common tenure be given a written statement of particulars of office by an officer of the diocese nominated for that purpose by the bishop. The statement must, among other things, contain particulars of whether the office holder is entitled to a stipend and, if so, the amount of the stipend or the method of calculating it. The statement must also contain particulars of whether the office is full-time or part-time.
8. Regulation 11 makes provision for the entitlement to stipend of common tenure office holders. An office holder who is occupying a full-time stipendiary post is entitled to receive an annual stipend of an amount which is not less than the national minimum stipend (i.e. the amount specified for that purpose by the Archbishops' Council) or which, together with any income received by the officer holder from other sources which is related to or derived from the duties of the office, is not less than the national minimum stipend. An office holder who occupies a part-time post is entitled to such stipend as may be specified in the statement of particulars of office given under regulation 3. Any direction given by the bishop to the diocesan board of finance under section 5(2) of the Diocesan Stipends Funds Measure 1953 with respect to providing or augmenting stipends must be consistent with the provisions of regulation 3 (see regulation 3(5)).
9. The effect of regulation 3, read with regulation 11, is that any office held under common tenure – which includes the office of incumbent (see section 1(1)(f) of the 2009 Measure) – may, if the statement of particulars so specifies, be an office in respect of which the holder is not entitled to a stipend. That alone should suffice to establish that the appointment of an incumbent on a non-stipendiary basis is now lawful.
10. Nevertheless, it is in any event clear that whatever may have been the position in the past, the appointment now of an incumbent on the basis that he or she will not receive a stipend is not a simoniacal act and is therefore not rendered void by section 4 of the 1588 Act.
11. Where a post that is to be held under common tenure – whether it is full- or part-time – is not one in respect of which the office holder is entitled to a stipend, an appointment to that post on that basis does not amount to an agreement by the priest to give up a claim to any emoluments of the office. The office simply does not have any emoluments in the form of stipend.
12. Emoluments of benefices other than stipends have all been abolished by statute. Profits from endowment and glebe ceased to be profits of benefices following the coming into force of the Endowments and Glebe Measure 1976 on 1 April 1978 and the right that was conferred by section 1 of that Measure to a guaranteed annuity was abolished in respect of new appointments by the Stipends (Cessation of Special Payments) Measure 2005. No newly appointed incumbent is entitled to parochial fees. These fees are now payable only to the diocesan board of finance and the

parochial church council: section 1, Ecclesiastical Fees Measure 1986 (as amended by the Ecclesiastical Fees (Amendment) Measure 2011).

13. Accordingly, accepting appointment as an incumbent where the office holder is not entitled to a stipend, does not amount to the priest concerned agreeing to give up any emoluments of the benefice and the question of simony does not arise.
14. Similar considerations apply in relation to the issue previously identified by the Commission in relation to liability to income tax. If a priest is appointed to an office of incumbent and is not entitled to a stipend, there will be no earnings or other income attributable to the holding of that office and therefore no charge to tax will arise in respect of it.
15. In conclusion, the legal difficulties that may previously have existed in relation to appointing incumbents on a non-stipendiary basis have been removed and there is no longer any doubt as to the lawfulness of making such appointments.

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