

GENERAL SYNOD
DRAFT ECCLESIASTICAL OFFICES (TERMS OF SERVICE) (AMENDMENT)
REGULATIONS 2020

Explanatory Notes

A. OVERVIEW

1. The Parental Bereavement (Leave and Pay) Act 2018 (the “**Act**”) confers a new statutory workplace right on employees who are parents to two weeks’ paid leave if they suffer a loss of a child under 18 (including a stillbirth from 24 weeks of pregnancy). Regulations¹ have been made under the Act to provide for when and how parental bereavement leave can be taken and the eligibility criteria to qualify for parental bereavement leave and pay.
2. The Act received Royal Assent on 13 September 2018 and came into force on 6 April 2020. The Act provides for this new right by amending the Employment Rights Act 1996.
3. The entitlement to Parental Bereavement Leave and Pay gives employees who are parents² the right to:
 - (a) two weeks of paid leave, which can be taken either in one block or as two separate blocks of one week, within a 56-week window from the child’s death or stillbirth; and
 - (b) statutory pay of £151.20 a week or 90% of average weekly earnings (whichever is lower) during the period of statutory leave.
4. As ecclesiastical office holders to whom the Ecclesiastical Offices (Terms of Service) Regulations 2009 (the “**2009 Regulations**”) apply are not employees, they are only entitled to maternity, paternity, parental, adoption and shared parental leave pursuant to Regulation 23(1) of the 2009 Regulations. Therefore, Regulation 23(1) needs to be amended to include parental bereavement leave in order to confer this statutory right on these ecclesiastical office holders – it does not apply to them automatically.
5. Part 2 of the Act also amends the Social Security Contributions and Benefits Act 1992 by adding a new section 12ZD to provide for statutory parental bereavement pay. New section 171ZZ14(2) provides that an “employee” for the purposes of parental bereavement pay means a person who is gainfully employed in Great Britain either under a contract of service or in an office with earnings. Therefore, ecclesiastical office holders are entitled (automatically) to statutory parental bereavement pay, in the same way as they are automatically entitled to statutory maternity, paternity and adoption pay.
6. The draft Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2020 (the “**draft Amending Regulations**”) amend the 2009 Regulations to confer the statutory entitlement to parental bereavement leave that employees have under the Employment Rights Act 1996 on such ecclesiastical office holders.
7. The reasons why this amendment is considered to be necessary and appropriate are:
 - (a) Regulation 23(1) of the 2009 Regulations reflects the Church’s policy that office holding clergy to whom the 2009 Regulations apply should have the benefit of the same statutory rights as employees unless there is a good reason for them not to. It is noted that Regulation 23 of the 2009 Regulations is drafted to ensure

¹ Parental Bereavement Leave Regulations 2020 (SI 2020/249) and Statutory Parental Bereavement Pay (General) Regulations 2020 (SI 2020/233).

² “Parent” includes other primary carers for children, such as guardians and foster-parents, as well as kinship carers (close friends and family members who have assumed caregiving roles in the absence of a child’s parents).

that any changes to the statutory rights of employees in respect of maternity, paternity, parental adoption and shared parental leave in the Employment Rights Act 1996 (or in regulations made under it) automatically apply to clergy office holders. Therefore, amending Regulation 23 to confer this new statutory right to parental bereavement leave on such clergy office holders is in line with the Church's policy to provide for the wellbeing of its clergy.

- (b) Conferring the statutory entitlement to parental bereavement leave on such office holding clergy will not prevent the bishop from allowing a further period of special leave in addition to the statutory entitlement. It is expected that a further period of special leave would normally be allowed by a bishop in these circumstances.
- (c) If the statutory right to leave is conferred on such office holders, the Church Commissioners will be able to reclaim the statutory rate of pay for the two weeks of statutory leave, in the same way as for maternity, paternity and adoption leave.

B. PROCESS

- 8. The Archbishops' Council is laying the draft Amending Regulations before the General Synod for approval under section 2 of the Ecclesiastical Offices (Terms of Service) Measure 2009.
- 9. The Business Committee has determined (as provided by that section) that the draft Amending Regulations do not need to be debated. However, under SO 71(2), any member who wishes to debate the draft Amending Regulations must give notice in accordance with SO 13 by not later than 5.30 p.m. on Monday 23rd November 2020.
- 10. Amendments to the draft Amending Regulations are permissible. Under SO 71(5), any member who wishes to give notice of an amendment must do so in accordance with SO 13 not later than 5.30 p.m. on Monday 23rd November 2020.

C. NOTES ON CLAUSES

Regulation 1: Citation and commencement

- 11. This regulation provides for the draft Amending Regulations to come into force on the day after the day on which they are laid before Parliament. As the rights under the Act came into force earlier this year, it is proposed that the draft Amending Regulations should come into force as soon as possible.

Regulation 2: Parental bereavement leave

- 12. Regulation 2(1) amends Regulation 23(1) of the 2009 Regulations to include parental bereavement leave. The effect of this inclusion is to confer the right to statutory parental bereavement leave on those ecclesiastical office holders to whom the 2009 Regulations apply.
- 13. Regulation 2(2) amends Regulation 23(7) of the 2009 Regulations to include the definition of parental bereavement leave, as being the leave under section 80E of the Employment Rights Act 1996.
- 14. Regulation 2(3) amends Regulation 3(5)(g)(iv) of the 2009 Regulations (relating to statement of particulars of office) to include a reference to parental bereavement leave. This change also includes adding a reference to shared parental leave as, when the right to shared parental leave was conferred on ecclesiastical office holders in

2018³, a reference to it was not also included in Regulation 3(5)(g)(iv) and so the opportunity to rectify this oversight has been taken.

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³ Regulation 23 of the 2009 Regulations was substituted by section 6(10) of the Church of England (Miscellaneous Provisions) Measure 2018.