



## Implementing the changes to terms of service for Residentiary Canons made by the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2021 to the Ecclesiastical Offices (Terms of Service) Regulations 2009

### A. Introduction

The Cathedrals Working Group Report 2018<sup>1</sup> recommended a number of changes in relation to the terms of service of certain types of residentiary canons. To implement these recommendations, Part 2 of the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2021 (the **2021 Amending Regulations**) amended the Ecclesiastical Offices (Terms of Service) Regulations 2009 (the **2009 Regulations**) in relation to two specific groups of residentiary canons - “*qualifying residentiary canons*” and “*executive residentiary canons*”.

This guidance explains when these changes will come into force, who is in these two groups of residentiary canons and what changes have been made to the terms of service of each group.

### B. When will these changes come into force for my cathedral?

The changes to the 2009 Regulations will come into force for the residentiary canons in your cathedral on the same date on which your new Constitution and Statutes come into force under the Cathedrals Measure 2021 (the **2021 Measure**).

**NOTE:** The changes explained in this guidance only relate to residentiary canons who hold office on common tenure. This is because the 2009 Regulations do not apply to freehold clergy.

### C. Who is in these two groups of residentiary canons?

The 2009 Regulations make small changes to the terms of service of two specific groups of residentiary canons - “*qualifying residentiary canons*” and “*executive residentiary canons*”<sup>2</sup>.

#### I. Who is an “executive” residentiary canon?

An executive residentiary canon is a residentiary canon who is considered in law to be an executive member of the cathedral Chapter. Paragraph 1 of Schedule 1 to the 2021 Measure provides that “*each residentiary canon who carries out cathedral duties*” is an executive

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<sup>1</sup> [Cathedrals Working Group - Final Report\\_0.pdf \(churchofengland.org\)](#)

<sup>22</sup> For more information as to the background and reasons for the changes being made see [GS 2218X-Ecc Offices \(Terms of Service\) \(Amendment\) Regs 2021 Exp Note-v4 \(1\).pdf \(churchofengland.org\)](#)

member of the Chapter. “Cathedral duties” is a defined term in s.45 of the 2021 Measure<sup>3</sup>.

It is important to note that it is not the receipt of a stipend that determines whether or not a residentiary canon is an “executive” Chapter member, but whether they carry out “cathedral duties” – i.e. whether they carry out executive (non-trustee) functions in the cathedral.

## 2. Who is a “qualifying residentiary canon”?

Regulation 2(4) of the 2009 Regulations<sup>4</sup> defines a “qualifying residentiary canon” as:

- (a) a residentiary canon who the Commissioners are required to make payments to the residentiary canon under section 28(1)(b) of the 2021 Measure;
- (b) a residentiary canon who the Chapter of the cathedral concerned pays the whole of the residentiary canon's stipend or other emoluments and provides the residentiary canon's housing; or
- (c) a residentiary canon who does not come within sub-paragraph (a) or (b) but the Chapter of the cathedral concerned has resolved that the residentiary canon is nonetheless to be regarded as being a qualifying residentiary canon.

It should be clear which residentiary canons in your cathedral fall within categories (a) and (b) above and so are automatically qualifying residentiary canons.

If the Chapter considers it appropriate to pass a resolution under (c), to provide that an existing residentiary canon should be regarded as a qualifying residentiary canon for these purposes, it is advisable to seek the view and obtain the support of the residentiary canon first. If the Chapter should decide to pass such a resolution in relation to new posts, the recruitment role description should be clear that the Chapter intends to pass such a resolution in relation to the residentiary canon to be appointed to this post. In this way, the person who takes up the post will be aware that such a resolution will be passed and that they will be regarded as a qualifying residentiary canon.

## 3. Can a residentiary canon be both an “executive” and a “qualifying” canon?

Yes – almost all qualifying residentiary canons will also be executive residentiary canons. However, there will be quite a significant minority of executive residentiary canons who are not also qualifying residentiary canons.

## D. What changes have been made to the terms of service of “executive” residentiary canons?

Regulation 3 of the 2021 Amending Regulations inserts a new Regulation 18A into the 2009 Regulations<sup>5</sup> which applies only to executive residentiary canons. Regulation 18A requires the dean to carry out an annual review with each residentiary canon who is an executive member of the Chapter in relation to the exercise of his or her cathedral duties<sup>6</sup>.

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<sup>3</sup> see Annex 3

<sup>4</sup> See Annex 2

<sup>5</sup> The full text of new Regulation 18A and the definition of “cathedral duties” in s.45(1) of the 2021 Measure is at Annex 3.

<sup>6</sup> See Annex 3

The annual review meeting between the dean and each executive residentiary canon relates to the non-trustee cathedral duties of each executive residentiary canon. It is in addition to and separate from Ministerial Development Reviews (**MDRs**) and has an entirely different function from MDRs. The bishop will continue to be responsible for residentiary canons' MDRs as part of their general episcopal oversight of all licensed clergy<sup>7</sup>.

For more information about Annual Reviews, please see the Commissioners' guidance on Annual Reviews which is available on the Cathedral Guidance Portal.

#### **E. What changes have been made to the terms of service of “qualifying” residentiary canons?**

Regulations 4 to 8 of the 2021 Amending Regulations amend various provisions in the 2009 Regulations which only apply to “qualifying” residentiary canons. The full text showing the changes to the various specific Regulations in the 2009 Regulations is set out in Annex 2.

Regulations 4 to 7 of the 2021 Amending Regulations transfer the following functions from the bishop to the dean for qualifying residentiary canons:

- (a) The provision of suitable training (other than safeguarding training, which remains with the bishop) and the provision of time off work to undertake it.
- (b) The granting of special leave, although the dean is required to inform the bishop when granting special leave for a residentiary canon. In addition, the dean's power to grant special leave is limited to three months, with the granting of any further period of special leave by the dean requiring the bishop's prior written consent.
- (c) The determination of a dispute about the time a qualifying residentiary canon spends on public duties (other than those relating to the office of residentiary canon, which will remain with the bishop), unless that dispute is with the dean.
- (d) The person to whom a qualifying residentiary canon must provide a notice of sickness will now be the dean, in addition to the person nominated by the bishop. The requirement to notify to the person nominated by the bishop has been retained and not substituted, because of the need to inform the Church Commissioners' payroll through which all residentiary canons are paid.
- (e) The ability to direct a residentiary canon to undergo a medical examination.

Regulation 8 requires a diocesan bishop to obtain the agreement of the dean before making a direction for a qualifying residentiary canon to continue in office beyond the age of 70.

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<sup>7</sup> [AC MDR Guidance 2022 for website PDF.pdf \(churchofengland.org\)](#)

**F. What do we need to do to communicate these changes to qualifying and/or executive residentiary canons before these changes come into force for our cathedral?**

**1. Communicating the changes to qualifying residentiary canons**

There is no requirement to provide a Statement of Changes in relation to the changes to the law affecting qualifying residentiary canons. However, it would be good practice to inform qualifying residentiary canons of the changes to the law governing their terms of service. A template Explanatory Note has been provided to assist you to do this at Annex I and it is suggested that it is circulated shortly before the date on which your new Constitution and Statutes will come into force (i.e. Certificate Date 1). You could also consider offering the qualifying residentiary canons in your cathedral the opportunity to meet with the Administrator and dean to discuss what implications these changes to the law may have for them in practice.

**NOTE:** If a Chapter passes a resolution to provide that a residentiary canon should be regarded as a qualifying residentiary canon (see Section C 2 above), new Regulation 6(2A) of the 2009 Regulations requires the officer nominated by the bishop under Regulation 3(1) of the 2009 Regulations to give that residentiary canon a written statement to that effect<sup>8</sup>. This written statement must be given at the earliest opportunity and no later than one month after the resolution that the residentiary canon is to be regarded as a qualifying residentiary canon has come into effect.

**2. Communicating the changes to executive residentiary canons**

There is no requirement to provide a Statement of Changes in relation to the Annual Review for executive residentiary canons. However, to inform the dean and the executive residentiary canons about the new legal requirement for them to undertake/participate in an Annual Review, copies of the Commissioners' Guidance on Annual Reviews should be provided to the dean and all executive residentiary canons in advance of your new Constitution and Statutes coming into force (i.e. Certificate Date 1). It is also suggested that cathedrals may find it helpful hold a training session for their executive residentiary canons and the dean at which the Commissioners' Guidance on Annual Reviews and on Accountability to Chapter can be discussed and any information as to how the Annual Reviews are to be managed in your cathedral can be shared with those affected.

**G. What changes do we need to make to our template SoPs for future appointments of residentiary canons to reflect the changes for qualifying and/or executive residentiary canons?**

Template SoPs for Qualifying residentiary canons and for non-Qualifying Residentiary canons will be available on the Cathedral Guidance Portal to assist you.

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<sup>8</sup> It is suggested that the Explanatory Note for Qualifying Residentiary Canons at Annex I is also provided with the written statement.

## Annex I

### Explanatory Note for Qualifying Residentiary canons

#### I. What is this note about and why do I need to read it?

The Cathedrals Working Group Report 2018 recommended a number of changes in relation to the terms of service of certain types of residentiary canons. To implement these recommendations, Part 2 of the Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2021 (the **2021 Amending Regulations**) amended the Ecclesiastical Offices (Terms of Service) Regulations 2009 (the **2009 Regulations**) in relation to two specific groups of residentiary canons - “*qualifying residentiary canons*” and “*executive residentiary canons*”.

You have been provided with this explanatory note as you are a *qualifying residentiary canon*. This note explains what changes to the law have been made to your terms of service and when these changes will come into force.

#### 2. Who is a “qualifying residentiary canon” and how do you know I am one?

A qualifying residentiary canon<sup>9</sup> is:

- (a) a “commissioner canon” (i.e. a residentiary canon who the Commissioners are required to make payments to under section 28(1)(b) of the Cathedrals Measure 2021 (the **2021 Measure**);
- (b) a residentiary canon whose entire stipend or other emoluments is paid by the Chapter and the Chapter provides the residentiary canon's housing; or
- (c) a residentiary canon who does not come within (a) or (b) but the Chapter has resolved that the residentiary canon is nonetheless to be regarded as being a qualifying residentiary canon.

If you do not fall within categories (a) or (b) above, you will have received a written statement to inform you that the Chapter has passed a resolution that you are to be regarded as a qualifying residentiary canon.

#### 3. What are the changes to the Terms of Service of qualifying residentiary canons?

Regulations 4 to 8 of the 2021 Amending Regulations amend various provisions in the 2009 Regulations which only apply to “qualifying” residentiary canons<sup>10</sup>.

Regulations 4 to 7 of the 2021 Amending Regulations transfer the following functions from the bishop to the dean for qualifying residentiary canons:

- (a) The provision of suitable training (other than safeguarding training, which remains with the bishop) and the provision of time off work to undertake it.
- (b) The granting of special leave, although the dean is required to inform the bishop when granting special leave for a residentiary canon. In addition, the dean's power to grant special leave is limited to three months, with the granting of any further period of special leave by the dean requiring the bishop's prior written consent.

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<sup>9</sup> Regulation 2(4) of the 2009 Regulations

<sup>10</sup> See Annex 2.

- (c) The determination of a dispute about the time a qualifying residentiary canon spends on public duties (other than those relating to the office of residentiary canon, which will remain with the bishop), unless that dispute is with the dean.
- (d) The person to whom a qualifying residentiary canon must provide a notice of sickness will now be the dean, in addition to the person nominated by the bishop. The requirement to notify to the person nominated by the bishop has been retained and not substituted, because of the need to inform the Church Commissioners' payroll through which all residentiary canons are paid.
- (e) The ability to direct a residentiary canon to undergo a medical examination.

Regulation 8 requires a diocesan bishop to obtain the agreement of the dean before making a direction for a qualifying residentiary canon to continue in office beyond the age of 70.

#### 4. [When do these changes come into force?](#)

The changes to the 2009 Regulations will come into force for you on the same date as your cathedral's new Constitution and Statutes come into force under the 2021 Measure.

## Annex 2

### “Qualifying” residentiary canons

### Amendments to the 2009 Regulations

*Note: The new provisions added by the 2021 Amending Regulations are shown as underlined text.*

#### 2 Interpretation

- (4) For the purposes of these Regulations, a residentiary canon is a “qualifying residentiary canon” if—
- (a) the Commissioners are required to make payments to the residentiary canon under section 28(1)(b) of the Cathedrals Measure 2021,
  - (b) the Chapter of the cathedral concerned pays the whole of the residentiary canon's stipend or other emoluments and provides the residentiary canon's housing, or
  - (c) the residentiary canon does not come within sub-paragraph (a) or (b) but the Chapter of the cathedral concerned has resolved that the residentiary canon is nonetheless to be regarded as being a qualifying residentiary canon.

#### 6 Statement of changes

- (1) If, after the material date, there is a change in any of the matters particulars of which are required by regulations 3 to 5 above to be included or referred to in a statement under regulation 3, the officer nominated by the bishop or registrar under regulation 3(1) shall give to the office holder a written statement containing particulars of the change.
- (2) For the purposes of paragraph (1) above—
- (a) in relation to a matter particulars of which are included or referred to in a statement given under regulation 3 other than in instalments, the material date is the date to which the statement relates,
  - (b) in relation to a matter particulars of which are included or referred to in an instalment of a statement given under regulation 3, the material date is the date to which the instalment relates, and
  - (c) in relation to any other matter, the material date is the date by which a statement under regulation 3 is required to be given.
- (2A) If a residentiary canon becomes a qualifying residentiary canon by virtue of a resolution under regulation 2(4)(c), the officer nominated by the bishop under regulation 3(1) shall give to the residentiary canon a written statement to that effect.
- (3) A statement under paragraph (1) or (2A) above shall be given at the earliest opportunity and, in any event, not later than one month after the change in question.
- (4) A statement under paragraph (1) or (2A) may refer the office holder to any such laws or documents as are referred to in regulation 4(2) above.

## **19 Continuing ministerial education**

- (1) Each office holder (other than an archbishop) shall be under a duty to participate in arrangements approved by the diocesan bishop or, in the case of a diocesan bishop, by the archbishop of the province concerned, as appropriate for the continuing ministerial education of that office holder.
- (2) The bishop or, as the case may be, the archbishop, shall have regard, in carrying out . . . functions under paragraph (1) above of approving the arrangements referred to therein, to any guidance issued by the Archbishops' Council.
- (3) Each archbishop shall make such arrangements as he [or she] thinks appropriate for his [or her] continuing ministerial education.
- (4) Any diocesan bishop shall be under a duty to use all reasonable endeavours to ensure that every office holder in the diocese is afforded opportunities to participate in such education or training as is appropriate to promote that office holder's ministerial development.
- (5) In the case of an office holder who is a qualifying residentiary canon, the functions imposed by paragraphs (1), (2) and (4) are instead to be carried out by the dean of the cathedral concerned; and the references in those paragraphs to the diocesan bishop are accordingly to be read as references to the dean.
- (6) But paragraph (5) does not apply in so far as the functions imposed by paragraphs (1), (2) and (4) relate to education or training on the safeguarding of children or vulnerable adults (within the meaning of the Safeguarding and Clergy Discipline Measure 2016).

## **22A Special leave for qualifying residentiary canons**

- (1) When allowing a period of special leave to a qualifying residentiary canon, the dean of the cathedral shall notify the diocesan bishop in writing.
- (2) Where the dean of a cathedral has allowed a qualifying residentiary canon a period or periods of special leave in any calendar year totalling three months, the dean may not allow any further period of special leave to the qualifying residentiary canon in that calendar year without having obtained the written consent of the diocesan bishop.

## **24 Right to time spent on public duties**

- (1) An office holder may, subject to paragraph (2) below, spend time on public duties other than the duties of his or her office.
- (2) The amount of time which an office holder may spend on public duties under this regulation, the occasions on which and any conditions subject to which the time may be spent, are those that are reasonable in all the circumstances, having regard, in particular, to—
  - (a) how much time is required for the performance of the particular public duty;
  - (b) how much time has already been spent on public duties under this regulation;
  - (c) the nature of the office and its duties and the effect of the absence of the office holder on the performance of the duties of the office; and



- (d) any remuneration which the office holder is entitled to receive in connection with the duties of the office.
- (3) In the event of any dispute as to any of the matters referred to in sub-paragraph (2) above, the matter shall be determined by the diocesan bishop or, in the case of an office holder who is a diocesan bishop, the archbishop of the province in which the diocese is situated or, in the case of an office holder who is a qualifying residentiary canon, the dean of the cathedral concerned or, if the qualifying residentiary canon is in dispute with the dean, the diocesan bishop.
- (4) In this regulation “public duties” means—
  - (a) any work done for a public authority, including membership of a court or tribunal, or for a charity within the meaning of the Charities Act 2006 or an incorporated or a registered friendly society, and
  - (b) any work done in connection with the activities of an independent trade union representing office holders of a description which includes the person in question.

## 27 Sickness

- (1) If an office holder who is in receipt of a stipend is unable to perform the duties of his or her office because of illness for a period of one working day or longer he or she must report the absence to the person nominated for the purposes of [this regulation], who shall inform the Commissioners and, if the report is in writing, send them a copy thereof.
- [(1A) The person nominated under paragraph (1) above shall be nominated—
  - (a) in the case of an office holder other than the diocesan bishop, by the diocesan bishop, and
  - (b) in the case of an office holder who is a diocesan bishop, by the registrar of the province in which the diocese is situated.]
- (2) If an office holder [who is in receipt of a stipend] is absent from work because of illness for a continuous period of more than seven days he or she must supply the person nominated as aforesaid with a certificate signed by a qualified medical practitioner and that person shall send a copy of the certificate to the Commissioners.
- (2A) If an office holder who is a qualifying residentiary canon is absent from work because of illness for a continuous period of more than seven days he or she must supply the dean of the cathedral concerned with a certificate of the kind referred to in paragraph (2) (in addition to supplying the certificate to the person nominated under paragraph (1), if required to do so).
- (3) An office holder who is absent from work because of illness must use all reasonable endeavours to make arrangements for the duties of the office to be performed by another person during the absence which may, where appropriate, consist of notifying a responsible person or authority of the absence.
- (4) If an office holder is entitled to receive statutory sick pay under Part XI of the Social Security and Contributions and Benefits Act 1992 for any period of absence from work, the office holder shall be entitled during that period to receive in full any stipend which is payable in respect of the office.

- (5) The diocesan bishop or, in the case of an office holder who is a diocesan bishop, the archbishop of the province in which the diocese is situated, may, if he is satisfied that the office holder is, by reason of illness, unable adequately to discharge the duties of his or her office, permit the office holder to be absent from work for such period as he thinks appropriate and may make provision for the discharge of those duties during the period of absence of the office holder.
- (6) When giving any directions under section 5(2) of the Diocesan Stipends Funds Measure 1953 in relation to the payment of a stipend to an office holder who is absent from work for illness for any period after the date on which he or she is entitled to receive statutory sick pay under the said Part XI, a diocesan bishop shall have regard to any guidance issued by the Archbishops' Council in the exercise of its functions as the Central Stipends Authority.

## **28 Medical examination**

- (1) The diocesan bishop or, in the case of an office holder who is a diocesan bishop, the archbishop of the province in which the diocese is situated may, if he [or she] has reasonable grounds for concern about the physical or mental health of an office holder, direct that the office holder shall undergo a medical examination by a medical practitioner selected by agreement between the bishop (or archbishop) and the office holder or, in default of agreement, by medical practitioners consisting of a practitioner chosen by each party.
  - [(1A) The archbishop of either province may, if he [or she] has reasonable grounds for concern about the physical or mental health of the archbishop of the other province, direct that that archbishop shall undergo a medical examination by a medical practitioner selected by agreement between both archbishops or, in default of agreement, by medical practitioners consisting of a practitioner chosen by each archbishop.]
  - [(1B) In the case of an office holder who is a qualifying residentiary canon, the power conferred by paragraph (1) is instead exercisable by the dean of the cathedral concerned; and the first reference in that paragraph to the diocesan bishop is accordingly to be read as a reference to the dean.
- (2) If an office holder fails to comply with a direction given under paragraph (1) [or (1A)] above or fails to disclose or authorise the disclosure of any relevant medical records, when requested to do so, any person or body responsible for operating any capability procedures in respect of the office holder may draw such inferences as appear to that person or body to be appropriate having regard to all the circumstances.

## **29A Holding office beyond the age of 70**

- [(1) A person who holds or is to hold office under Common Tenure and has attained the age of 70 years may be appointed, or may have his or her appointment continued, for a fixed term or under terms which provide for the appointment to be terminated on the occurrence of a specified event if the person occupies a post by virtue of a direction given under this regulation.
- (2) An archbishop may give a direction for a person holding the office of diocesan bishop in the archbishop's province who has attained the age of 70 years to continue to hold that office for the period specified in the direction.

- (3) A diocesan bishop may, with the concurrence of the archbishop in whose province the diocese is situated, give a direction for a person holding the office of suffragan bishop or dean in the diocese who has attained the age of 70 years to continue to hold that office for the period specified in the direction.
- (4) A diocesan bishop may give a direction for a person holding the office of residentiary canon or archdeacon in the diocese who has attained the age of 70 years to continue to hold that office for the period specified in the direction.
- (4A) In the case of an office holder who is a qualifying residentiary canon, the diocesan bishop may not give a direction under paragraph (4) without having obtained the written agreement of the dean of the cathedral.
- (5) A diocesan bishop may give a direction for a person who has attained the age of 70 years to hold or to continue to hold the office of incumbent of a benefice in the diocese, or to hold or to continue to hold an office in the diocese under a licence granted by the bishop, for the period specified in the direction (including in a case where the person was holding the office immediately before attaining that age).
- (6) The power to give a direction under a paragraph of this regulation includes, in the case of a person holding office by virtue of a previous direction under that paragraph, a power to give one or more further directions under that paragraph.
- (7) The period specified in a direction given under paragraph (2), (3) or (4)—
  - (a) must begin with the day on which the person attains the age of 70 years or, where the person is holding the office by virtue of a previous direction given under that paragraph, immediately after the end of the period specified in that previous direction, and
  - (b) must end on the date, or on the occurrence of an event, specified in the direction but must not extend beyond the day on which the person attains the age of 75 years.
- (8) The period specified in a direction given under paragraph (5)—
  - (a) must begin on or after the day on which the person attains the age of 70 years or, where the person is holding the office by virtue of a previous direction given under that paragraph, immediately after the end of the period specified in that previous direction, and
  - (b) must end on the date, or on the occurrence of an event, specified in the direction (and may extend beyond the day on which the person attains the age of 75 years).
- (9) An archbishop or diocesan bishop may not give a direction under this regulation unless he or she considers that the person in question will be capable of performing the duties of the office throughout the period for which the person is to hold the office.
- (10) A diocesan bishop may not give a direction under paragraph (5) in the case of a person holding the office of incumbent or priest in charge of, or vicar in a team ministry for, a benefice in the diocese or the office of assistant curate in the diocese unless the bishop—
  - (a) considers that the pastoral needs of the parish or parishes concerned or of the diocese make it desirable to give the direction, and
  - (b) has obtained the consent of the parochial church council of the parish or each of the parishes concerned.

- (11) In deciding whether to give a direction under this regulation, an archbishop or diocesan bishop shall have regard to any guidance issued by the Archbishops' Council.
- (12) A direction given under this regulation must be in writing.]

## **Annex 3**

### **Executive residentiary canons: Annual Review**

#### **New Regulation 18A of the 2009 Regulations**

##### **18A Executive residentiary canons: annual review**

- (1) In the case of each office holder who is an executive residentiary canon, the dean of the cathedral shall, on at least one occasion in each calendar year, conduct a review with the residentiary canon of his or her exercise of cathedral duties.
- (2) A review under this regulation is to be known as an “annual review” and is in addition to the ministerial development review.
- (3) It shall be the duty of each executive residentiary canon to co-operate in any annual review undertaken under this regulation.
- (4) The dean shall keep a written record of the outcome of any annual review and of any relevant matters relating to such a review, which shall be signed by the residentiary canon and the dean.
- (5) In this regulation, “executive residentiary canon” means a residentiary canon who is an executive member of the Chapter of the cathedral concerned; and “executive member” and “cathedral duties” each have the same meaning as in the Cathedrals Measure 2021.

##### **Cathedrals Measure 2021 – definition of “cathedral duties”**

##### **45 Interpretation**

- (1) In this Measure—  
“cathedral duties”, in relation to a cathedral, means duties (whether in the cathedral or the diocese) which should, in the opinion of the Chapter after consultation with the bishop, be performed in or from the cathedral;