

Summary of the provisions of the Ecclesiastical Offices (Terms of Service) Legislation

1. The Ecclesiastical Offices (Terms of Service) Measure and Regulations are due to come into effect at the end of January 2011.
2. They will confer a new form of tenure (common tenure) on clergy and on canonically licensed lay workers in receipt of stipend and/or housing. When the legislation takes effect,
 - all *new* appointments will be on common tenure;
 - the Archbishops of Canterbury and York, licensed office holders and residentiary canons on fixed term appointments will automatically be transferred to common tenure;
 - all other freeholders will be invited to indicate whether they are willing to move to common tenure, and if they do not, they will continue to hold their appointment on its existing terms.
3. The attached annex compares the terms under which an incumbent and priest in charge currently hold office with what those terms will be under common tenure.
4. Under common tenure, appointments will generally be held until retirement age. Regulation 29 sets out the only circumstances in which posts may be held under common tenure for a fixed term. These are when a post is:
 - designated as covering another office holder's absence from work
 - held by an office holder over 70
 - designated as a training post
 - designated as subject to sponsorship funding
 - designated as probationary office
 - designated as held in connection or conjunction with another office or employment
 - created by bishop's mission order under the Dioceses, Pastoral and Mission Measure
 - held by someone with limited leave to remain in the UK¹
 - designated as a locally supported ministry²
5. After the legislation has been brought into effect, it will be possible, if the Mission and Pastoral Committee has invited the views of interested parties on

¹ Subject to approval by the Archbishops' Council and Parliament of an amendment to the regulations to include this provision

² this option is also subject to approval by the Archbishops' Council and Parliament of an amendment to the regulations to include this provision. It will only be available for posts held by assistant curates not in sole or principal charge of the parish in which they serve, where the PCC has entered into a legally binding agreement with the DBF to meet all the costs, including stipend, expenses, pension and housing; and the office holder, bishop and PCC have all given their consent in writing.

proposals for a draft pastoral scheme, to designate a post under regulation 30 as held subject to potential pastoral reorganisation. Under Regulation 30, clergy will hold these posts under common tenure as incumbent, and the right of presentation to the benefice will not be suspended. If the post comes to an end within 5 years, the post holder will have a right to compensation (unless they find or decline another suitable post) limited to one year's loss of service. If the post does not come to an end within 5 years, the bishop will be required to inform the post holder that the post is now held until retirement age under common tenure. It will continue to be possible to appoint priests in charge in cases where it is appropriate to suspend the right of presentation to the benefice.

6. All incumbents appointed under common tenure will continue, as they do now, to have formal legal ownership of the parsonage house by virtue of holding the benefice as corporation sole. In the case of other office holders on common tenure, the housing will be provided by a relevant housing provider (usually the diocesan parsonages board).

New rights conferred on clergy in the form of Common Tenure

7. The legislation will confer new rights on clergy and other ecclesiastical officers, including the following:
 - a right to be provided with a written statement of particulars³ setting out various matters including:
 - the title of the office to which they have been appointed;
 - the date on which the appointment took place
 - their entitlement to stipend, fees (if any) and reimbursement of expenses
 - whether the appointment is part time, and, if so, the amount of the stipend and hours of work
 - any terms and conditions relating to rest periods and public holidays, for example, specifying a maximum number of Sundays on which leave may be taken, or specifying dates on which rest periods or annual leave may not be taken (such as principal feasts of the Church of England, Ash Wednesday, Good Friday and the parish patronal festival)
 - provision for sick pay
 - pension provision
 - details of their housing provision including the address of the house where they are required to live, the relevant housing provider (for office holders other than incumbents) and the terms of occupation

³ The Statement of Particulars may refer the office holder to some other reasonably accessible document for further details.

- the person or body to whom the housing belongs (in the case of incumbents, this will be the benefice);
 - the length of notice required to give in order to terminate the appointment; and
 - the body to be treated as the respondent in any proceedings brought before an employment tribunal;
- access to a grievance procedure;
 - the right to an itemised statement of stipend;
 - the right, if working full time, to receive a stipend of not less than the national minimum stipend
 - an uninterrupted rest period of not less than 24 hours in any period of seven days
 - 36 days' annual leave, or such greater amount as may be specified in the statement of particulars;
 - maternity, paternity, parental and adoption leave, in accordance with directions given by the Archbishops' Council as Central Stipends Authority;
 - the right to request time off or adjustments to the duties of the office to care for dependants in accordance with directions given by the Archbishops' Council as Central Stipends Authority;
 - rights of appeal to an employment tribunal if removed from office on grounds of capability;
 - a right to spend time on public duties other than the duties of the office, with the matter being determined by the (Arch)bishop if there is any dispute.

8. In addition, office holders other than incumbents (principally bishops, archdeacons, cathedral clergy, team vicars, priests in charge and assistant curates) will have the following:
- the right to accommodation 'reasonably suitable for the purpose' ;
 - the right to object to regulated transactions (i.e. the disposal, improvement, demolition or reduction of their house of residence) (with the Church Commissioners needing the consent of the Archbishops' Council when the diocesan bishop as occupant makes an objection);
 - the right to have the house of residence kept in good repair by the housing provider⁴
 - access to arbitration where there is a dispute about the performance of the respective obligations of the housing provider and the office holder which cannot be resolved by the grievance procedures.

Obligations conferred on clergy, bishops and other ecclesiastical office holders, by means of the legislation

⁴ The housing provider for archdeacons, team vicars and suffragan bishops will be the parsonages board. For archbishops and diocesan bishops it will be the Church Commissioners; for cathedral clergy it will be the chapter of the cathedral. Incumbents will continue to have formal legal ownership of their house by virtue of their occupation of the corporation sole.

9. Ecclesiastical office holders, including diocesan bishops, will be required by the legislation:-
- to participate and co-operate in ministerial development review (MDR) at least once every two years;
 - to participate in arrangements approved by the diocesan bishop or archbishop for their continuing ministerial education (CME);
 - to inform the person nominated by the bishop when unable to perform the duties of office through sickness;
 - to undergo a medical examination where the bishop or archbishop has reasonable grounds for concern about the office holder's physical or mental health;
 - to be subject to a capability procedure.
10. In addition the legislation will require office holders who are not incumbents:
- to provide access to the house of residence to the housing provider on notice for inspection or carrying out of repairs;
 - to notify the housing provider of works of repair that are required;
 - not to make any repairs, alterations or additions to the house of residence without the consent of the housing provider;
 - not to use the property except as a private residence for the office holder and his or her household and for such other purposes as may be agreed by the housing provider, which agreement shall not be unreasonably withheld.

Additional provisions for diocesan bishops

11. The Terms of Service legislation will require diocesan bishops:
- to nominate an officer of the diocese with responsibility for
 - (i) providing statements of particulars to clergy licensed by the bishop
 - (ii) receiving reports of absence of one day or longer where the office holder is unable to carry out the duties of the office
 - (iii) reporting the absence to the Church Commissioners, who need it for payment of statutory sick pay;
 - to make and keep under review an MDR scheme containing arrangements for a person nominated by the bishop to conduct a review with each office holder in the diocese at least once every two years;
 - to have regard to guidance issued by the Archbishops' Council when carrying out MDR;
 - to ensure that a written record of the outcome of MDR is kept and to have it signed by the office holder and the reviewer;
 - to use reasonable endeavours to ensure that office holders in the diocese are afforded opportunities to participate in CME that is appropriate for their ministerial development;

- to make appropriate arrangements to ensure that office holders in training posts are provided with suitable training and are afforded time off work as is necessary to complete it;
 - to have regard to the Archbishops' Council's code of practice concerning the capability and grievance procedures;
 - to appoint senior officers (normally archdeacons) to operate the capability procedure on their behalf
 - to address grievances referred to them by the archdeacon.
12. The legislation will confer the following additional powers on diocesan bishops:-
- to instigate a capability procedure where the bishop considers that an office holder's performance affords grounds for concern;
 - to determine any dispute over public duties carried out by an office holder who is not a diocesan bishop;
 - to direct that an office holder shall undergo a medical examination where the bishop has reasonable grounds for concern about the physical or mental health of the office holder;
 - to make fixed term appointments in certain limited circumstances (see paragraph 4 above);
 - to designate posts as subject to potential pastoral reorganisation under Regulation 30 (i) if the Mission and Pastoral Committee has invited the views of interested parties on proposals for a draft pastoral scheme.
- 13 The law affecting patronage and the appointments procedure remains unchanged. The Clergy Discipline Measure 2003 and Canons will continue to apply to all clergy whether on Common Tenure or not.
14. The Church of England, in the same way as all other organisations, is already subject to anti-discrimination legislation, apart from specific exemptions conferred by the Priests (Ordination of Women) Measure 1994 and the Equality Act 2010.
- 15 The legislation applies also as appropriate to diocesan bishops and the archbishops.

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Comparison of Freehold with Common Tenure

	Incumbents – current	Incumbents on Common Tenure	Priests in charge - current	Priests in charge – Common Tenure
The Canons	Apply	Apply	Apply	Apply
Continuing Ministerial Education	No legal requirement to participate	Bishop has duty to ensure opportunities are afforded to participate in appropriate education or training. Office holders required to participate under Clergy Terms of Service Regulations where it is required by the Bishop following MDR	No legal requirement to participate	Bishop has duty to ensure opportunities are afforded to participate in appropriate education or training. Office holder required to participate under Clergy Terms of Service Regulations where it is required by the Bishop following MDR
Grievance Procedure	No legal entitlement to make use of grievance procedure	Legal entitlement to seek redress for grievances under procedure in code of practice	No legal entitlement to make use of grievance procedure	Legal entitlement to seek redress for grievances under procedure in code of practice
Ministerial Development Review (MDR)	No legal requirement to participate	Bishop has duty to set up and keep under review a scheme for MDR. Office holders required to participate in MDR under Terms of Service Regulations	No legal requirement to participate	Bishop has duty to set up and keep under review a scheme for MDR. Office holders required to participate in MDR under Terms of Service Regulations

	Incumbents – current	Incumbents on Common Tenure	Priests in charge - current	Priests in charge – Common Tenure
Capability Procedure	Does not apply	Applies	Does not apply	Applies
Clergy Discipline Measure	Applies	Applies	Applies	Applies
Removal from office	<p>Only following:</p> <ul style="list-style-type: none"> • a breakdown of pastoral relationships • after pastoral reorganisation • ill health • reaching retirement age • disciplinary proceedings 	<p>Only following:</p> <ul style="list-style-type: none"> • a decision to remove from office under the capability procedure • pastoral reorganisation • reaching retirement age • disciplinary proceedings 	<ul style="list-style-type: none"> • After summary revocation of licence (but with appeal) or revocation on notice • after pastoral reorganisation • disciplinary proceedings 	<p>Only following</p> <ul style="list-style-type: none"> • a decision to remove from office under the capability procedure • pastoral reorganisation • reaching retirement age • disciplinary proceedings • on filling of the vacancy
Severance	Schedule 4 of the Pastoral Measure	Schedule 4 of the Pastoral Measure	None	Schedule 4 but for a maximum of one year
Sale of parsonage house	An absolute veto over the sale of the parsonage house	An absolute veto over the sale of the parsonage house	No rights at all	A right of objection to the Church Commissioners in the event of a proposed sale. DPB would need to convince the Commissioners that the sale was appropriate, as their consent is required.

	Incumbents – current	Incumbents on Common Tenure	Priests in charge - current	Priests in charge – Common Tenure
Statement of rights and responsibilities conferred by the Regulations	No	Statement of particulars has to be provided within one month of starting the post	No	Statement of particulars has to be provided within one month of starting the post
Parsonage house	Legal title vested in incumbent as corporation sole	Legal title vested in incumbent as corporation sole	Legal title vested in corporation sole, not the priest in charge	Legal title vested in corporation sole, not the priest in charge
Right to a minimum stipend	No	Yes	No	Yes
Right to specified time off	Not stated	A minimum of 36 days' annual leave and one day off per week	Not stated	A minimum of 36 days' annual leave and one day off per week
Unfair dismissal	No right of appeal	Right to appeal to Employment Tribunal if dismissed following capability procedure	No right of appeal	Right to appeal to Employment Tribunal if dismissed following capability procedure