

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

1. The Ecclesiastical Offices (Terms of Service) Measure and Regulations came into effect at the end of January 2011. They conferred a new form of tenure (common tenure) on clergy and on canonically licensed lay workers in receipt of stipend and/or housing.
 - On that date, all assistant curates, priests in charge, team vicars and residentiary canons in fixed term appointments transferred automatically onto common tenure, as did the Archbishops of Canterbury and York.
 - Clergy with the freehold (including incumbents, team rectors, deans, archdeacons, and residentiary canons not on fixed term appointments) were asked if they wished to transfer onto common tenure. They remain on their existing terms, unless and until they agree to move onto common tenure (which they may do at any time) or leave their current post.
 - Team rectors already in post on 31 January 2011, who hold freehold office for a limited term of years, will cease to hold office on the expiry of the current term. However, if they opt into common tenure at any time before the expiry of the term, the office will be converted to a common tenure one, and they will continue to hold it when the term expires without the need to be re-appointed.
 - All new appointments to ecclesiastical offices after that date are on common tenure¹
2. The attached annex compares the terms under which an incumbent and a priest in charge holds office under common tenure, with those of an incumbent who has not opted to move onto common tenure.
3. Under common tenure, appointments are generally 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 70²

¹There is one exception. Under the Ecclesiastical Offices (Terms of Service) (Consequential and Transitional Provisions) Order 2010, the holder of a freehold ecclesiastical office appointed after 31 January 2011 by virtue of a pastoral scheme or order to a new office, which, but for the terms of service Measure, would have been a freehold office, shall not be subject to common tenure, unless he or she gives his or her consent.

² Section 3 (10) of the Ecclesiastical Offices (Terms of Service) Measure 2009 applies the retirement provisions in s. 1 of the Ecclesiastical Offices (Age Limit) Measure 1975 to all holders of ecclesiastical offices subject to common tenure. The effect of this is that (subject to the limited provision in the 1975

- designated as a training post
 - designated as subject to sponsorship funding
 - designated as a 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 UK
 - designated as a locally supported ministry³
4. Where it is appropriate to suspend the right of presentation to the benefice, it continues to be possible to appoint priests in charge. However, there is now an alternative to suspension. Under Regulation 30, when the Mission and Pastoral Committee has invited the views of interested parties on proposals for a draft pastoral scheme, it is now possible to designate a post as held subject to potential pastoral reorganisation. Clergy holding office under regulation 30 are appointed as incumbent, and the right of presentation to the benefice is not suspended. If the post comes to an end within 5 years, the incumbent has a right to compensation (unless he or she finds or declines another suitable post) limited to one year's loss of service. If the office does not come to an end within 5 years, the bishop will be required to inform the office holder that the post is now held until retirement age under common tenure.
5. All incumbents appointed under common tenure (whether under regulation 30 or not) 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

6. The legislation has conferred new rights on clergy and other ecclesiastical officers, including the following:
- a right to be provided with a written statement of particulars⁴ setting out various matters including:

Measure for short-term extension in certain cases) an office may only be held by an office holder over 70 if it is a licensed office and is granted for a fixed or limited term, as provided for under regulation 29(1) (b) of the Ecclesiastical Offices (Terms of Service) Regulations 2009,.

³ This option is only 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.

- 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
 - 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 where the post is full-time, 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.

⁴ The Statement of Particulars may refer the office holder to some other reasonably accessible document for further details.

8. In addition, the legislation confers the following rights on licensed office holders (that is, clergy and licensed lay workers other than incumbents) including bishops, archdeacons, cathedral clergy, team vicars, priests in charge and assistant curates) where they hold a full-time stipendiary post or in other cases where accommodation is provided:
- 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 provider⁵
 - 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

9. The legislation requires all ecclesiastical office holders, including incumbents and diocesan bishops, to:-
- participate and co-operate in ministerial development review (MDR) at least once every two years;
 - participate in arrangements approved by the diocesan bishop or archbishop for their continuing ministerial education (CME);
 - inform the person nominated by the bishop when unable to perform the duties of office through sickness;
 - undergo a medical examination where the bishop or archbishop has reasonable grounds for concern about the office holder's physical or mental health;
 - be subject to a capability procedure.
10. In addition the legislation requires licensed office holders (that is, those who are not incumbents) where a house of residence is provided for them:
- 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

⁵ 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.

by the housing provider, which agreement shall not be unreasonably withheld.

Additional provisions for diocesan bishops

11. The legislation requires 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;
 - 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;
 - have regard to guidance issued by the Archbishops' Council when carrying out MDR;
 - ensure that a written record of the outcome of MDR is kept and to have it signed by the office holder and the reviewer;
 - 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;
 - 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;
 - have regard to the Archbishops' Council's code of practice concerning the capability and grievance procedures;
 - appoint senior officers (normally archdeacons) to operate the capability procedure on their behalf
 - address grievances referred to them by the archdeacon.

12. The legislation confers the following 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 3 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 (see paragraph 4 above.

- 13 The law affecting patronage and the appointments procedure remains unchanged. The Clergy Discipline Measure 2003 and Canons continue to apply to all clergy whether on Common Tenure or not.

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Comparison of Freehold with Common Tenure

	Incumbents on freehold	Incumbents on Common Tenure	Priests in charge (all on common tenure)
The Canons	Apply	Apply	Apply
Continuing Ministerial Education	No legal requirement to participate	Bishop has a duty to ensure opportunities are afforded to participate in appropriate education or training. Office holders are required to participate under Clergy Terms of Service Regulations where it is required by the Bishop following MDR	Bishop has a duty to ensure opportunities are afforded to participate in appropriate education or training. Office holders are 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 set out in code of practice	Legal entitlement to seek redress for grievances under procedure set out in code of practice
Ministerial Development Review (MDR)	No legal requirement to participate	Bishop has a duty to set up and keep under review a scheme for MDR. Office holders are required to participate in MDR under Terms of Service Regulations	Bishop has a duty to set up and keep under review a scheme for MDR. Office holders are required to participate in MDR under Terms of Service Regulations
Capability Procedure	Does not apply	Applies	Applies
Clergy Discipline Measure	Applies	Applies	Applies
Compensation for loss of office	Schedule 4 of the Pastoral Measure	Schedule 4 of the Pastoral Measure	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	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 on freehold	Incumbents on Common Tenure	Priests in charge (all on common tenure)
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
Right to a minimum stipend	No	Yes	Yes
Right to specified time off	Not stated	A minimum of 36 days' annual leave and one day off per week	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 removed from office following capability procedure	Right to appeal to Employment Tribunal if removed from office following capability procedure

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