



DIOCESE OF
LINCOLN

⊕ THE CHURCH
OF ENGLAND

Common Tenure: Frequently Asked Questions

Common Tenure: frequently asked questions

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44. What is the position of rural/area deans under Common Tenure?

1. What is the purpose of this new legislation?

This is an historic opportunity for the Church to clarify the rights and responsibilities of clergy and improve their terms and conditions in line with best current practice. The Government has power to give the rights of employees to those in work who are not employees (including clergy, most of whom are office holders), and is in a position to impose legislation on the Church. However, the reality is that these reforms will benefit the Church, as they are all about providing a level playing field for all clergy and ensuring that they have good, clear terms and conditions that will enable their ministry to flourish. Common tenure will eventually apply to all – archbishops, bishops, archdeacons, cathedral clergy, incumbents, team ministers and the 39% of clergy who currently have time-limited posts and no job security.

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2. What are the main recommendations?

Go to the Church of England's website (www.commontenure.org), where you can find the following documents

An introduction to Common Tenure on 2 sides of A4

- A summary of the legislation
- The Ecclesiastical Offices (Terms of Service) Measure 2009
- Ecclesiastical Offices (Terms of Service) Regulations 2009
- and other supporting information about the capability and grievance procedures

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3. Which office holders fall outside the scope of the legislation?

The following office holders fall outside the scope of the legislation:

- clergy with permission to officiate;
- non-stipendiary readers, deaconesses and licensed lay workers;
- those whose ministry is the subject of a contract of employment (for example, chaplains and diocesan employees) unless the bishop's license authorises them to exercise a wider ministry in the diocese (in which case Common Tenure may apply to that wider ministry).

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4. What consultation has there been about these proposals?

The Review Groups and Panels consulted extensively, and carefully considered a large number of written submissions. The Ecclesiastical Offices (Terms of Service) Measure and Regulations 2009 were the subject of numerous debates at the General Synod and have been approved by Parliament.

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5. Why retain the office holder status of clergy?

The review of clergy terms of service concluded that the ministry of the Church was best enabled through the retention of the office holder status of clergy. Whilst there are benefits to the integration of the majority of employee rights into the life of the Church, the classification of parochial clergy as employees would entail too significant an alteration to the basis on which ministry is provided. The key feature of an employer/employee relationship is the ability of the employer to direct the work of the employee. The nature of the parochial ministry of the Church of England makes such a relationship impossible

without a radical change in how clergy are deployed. The concept of the cure of souls is enormously valuable, and preserving office holder status ensures that the traditional relationships between priest and people, and priest and bishop are preserved.

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6. Why is the Church overturning a system that has stood it in good stead throughout the centuries?

There are many signs across the dioceses that the system is no longer 'standing in good stead'. The freehold has itself changed greatly over the last 100 years, and there are around 3,500 stipendiary clergy who do not have it. Even before the new legislation takes effect, freehold office may be brought to an end through reaching retirement age, ill health, after a breakdown of pastoral relationships, or through the effect of pastoral reorganisation as well as for disciplinary reasons.

Under Common Tenure, clergy will have their rights and responsibilities improved and clarified, so that they end up with terms of service that are in accord with current best practice. The capability procedure will be a fair and effective way of addressing the problem of those few clergy who are failing to perform to a minimum acceptable standard. They will have the right to appeal as a last resort to Employment Tribunals if removed from office on grounds of capability.

No clergy currently in freehold appointments will have the freehold taken away from them.

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7. How are the rights of patrons affected by Common Tenure?

The rights and responsibilities of patrons are not affected by the Terms of Service legislation. In particular, patrons, subject to the rights of the parish representatives and the bishop, have the right to nominate someone as incumbent. That will not change under Common Tenure. However with increased emphasis on making fair appointments the bishop and diocese will expect best appointments practice to be followed.

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8. Why are clergy required by the legislation to participate in ministerial development review?

Although clergy are called to be priests, they are also called to do a particular job, and it is right to try and define that job, and for clergy to be accountable as to how it is done. Ministerial development review is a way of helping clergy see what is achievable and how it can be done, and clarifying what can reasonably be expected of them. It ensures that any problems are not swept under the carpet but dealt with fairly and sensitively before they become major issues. Ministerial development review is not about catching clergy out. Nor is it about putting pressure on them to increase congregational numbers and ensure that parish share is paid promptly. Many clergy are in danger of overworking and some have unrealistic expectations of themselves that lead to unacceptably high levels of stress.

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9. What is the PCC's responsibility to pay working expenses under Common Tenure?

The responsibility of the PCC to pay working expenses does not change under Common Tenure, but, if a parish fails to meet its obligations to pay working expenses and it does not prove possible to resolve this through other means, it will be possible for clergy to make use of the grievance procedure as a last resort. However there is no resort to an Employment Tribunal if an office holder is dissatisfied at the end of a grievance procedure and there is

nothing in this legislation that imposes any new legal obligation, or risk, on DBFs in relation to the payment of working expenses.

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10. Can office holders be made redundant under Common Tenure?

The only mechanism for making clergy office holders ‘redundant’, as now, is through pastoral reorganisation. The legislation extends the right to be consulted on any pastoral scheme to all office holders under Common Tenure in receipt of a stipend or housing who would potentially be affected by the scheme. Under Common Tenure, priests in charge will be eligible for the first time to receive compensation for loss of office if they are displaced as a result of pastoral reorganisation.

In certain specified cases, it will be possible for an appointment to be held for a fixed term under Regulation 29. The termination of such an appointment at the end of the fixed term will not amount to redundancy and will not carry any right to compensation.

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11. Does an office holder under Common Tenure have the right to claim constructive dismissal?

No. The concept of constructive dismissal in law depends upon the existence of a contract of employment the terms of which have been breached by the employer. Office holders under Common Tenure do not serve under a contract of employment.

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12. In what circumstances will fixed or limited term appointments be permissible?

These are set out under Regulation 29 and are as follows:

- Where the post is intended to provide temporary cover for another office-holder’s authorised absence from work (for example, on maternity leave)
- Where the office-holder is over the retirement age of 70;
- Where the office is designated as a training post;
- Where the office is designated as a probationary post designed to facilitate re-entry into ministry following a period of absence;
- Where the post is subject to sponsorship funding;
- Where the office is created by a bishop’s mission order under the Dioceses, Pastoral or Mission Measure;
- Where the post is designated as held in conjunction with another office or employment, which comes to an end;
- Where the post is held by someone with limited leave to remain in the UK (subject to the agreement by Parliament of an amendment to the Regulations to include this provision);
- Where an assistant curate who is not in sole or principal charge of the parish in which he or she serves occupies a post which is designated as a Locally Supported Ministry Post, 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 (subject to the agreement by the Archbishops’ Council and Parliament of an amendment to the Regulations to include this provision).

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13. In what circumstances will a bishop be able to remove clergy from office?

Those holding office on Common Tenure will only be able to be removed from office through the discipline or capability procedures, or the operation of the Pastoral Measure. If the post is in one of the limited categories of fixed or limited term appointments under Regulation 29, it will come to an end at the end of the term.

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14. In what circumstances will clergy be able to appeal to an Employment Tribunal against removal from office?

Office holders will have the right to appeal to an Employment Tribunal if removed from office after a capability procedure. The existing rights under the Pastoral Measure to appeal against a pastoral scheme also remain in force.

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15. Why should an office holder with freehold agree to move onto Common Tenure?

This is a question that each office holder on freehold will need to consider for themselves, and take independent advice on if they consider it necessary, when they receive a letter from the Bishop of Grimsby (acting during the vacancy in the See of Lincoln) asking them to consider whether they might agree to the application of the legislation to them.

The legislation will require diocesan bishops to provide regular ministerial development review and continuing ministerial education for clergy who move onto Common Tenure, who will, in turn, be required to participate. Clergy on Common Tenure will also be entitled to receive a statement of particulars that sets their main terms and conditions. They will also come within the scope of a capability procedure that is designed to provide a just and clear way of proceeding when an office holder's performance gives cause for concern and to ensure that appropriate steps are taken and resources provided to enable them to improve their ministry.

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16. Will there be a mixed economy of those retaining freehold and those on Common Tenure?

Those clergy with the freehold who opt not to move to Common Tenure will retain the rights currently applicable to them until such time as they leave that post. This will mean that elements of Church legislation and procedures will remain operative for clergy with the freehold for many years to come. Much of the good practice, which will be clarified by the terms of service regulations, can, of course, be applied to all clergy regardless of their status.

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17. What is the position of incumbents who do not live in the parsonage house?

Amending Canon 29 (approved by General Synod in February 2010) makes provision, where a bishop considers it appropriate in all the circumstances, to permit an incumbent to live in a house other than the parsonage house, whether that house is situated within the benefice or outside it. It will therefore be possible, for example, for the bishop to permit a clergy couple, both of whom are incumbents, to occupy the same house. The statement of particulars in such circumstances will need to record the position.

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18. Will clergy involved in pastoral reorganisation be able to keep their freehold if they take on an extra parish?

Sometimes pastoral schemes are drafted, so that existing benefices cease to exist and new benefices are created, with the first incumbent being designated by the scheme. Such incumbents would therefore be taking up new posts. An unintended consequence of the terms of service legislation is that these incumbents would hold their new post under Common Tenure if the scheme was brought in after 31 January 2011 and would lose their existing freeholders' rights.

Following discussion at the Church Commissioners' Pastoral Committee, and the approval of General Synod in November 2010, it has been agreed that a new post created in this way would not count for the purposes of the Measure and its Regulations. This would mean that incumbents on freehold could not have Common Tenure imposed on them as a result of pastoral reorganisation.

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19. What is the relationship between the role description and the statement of particulars?

The statement of particulars is a factual statement of the basic terms and conditions of service that apply to the post holder in a particular office. The matters that must be contained in a statement of particulars are listed in Regulation 3(4) and (5) and Regulation 26. It is in order to make reference in statement of particulars to other documents reasonably accessible to the office holder, such as the diocesan handbook.

There is no legal requirement to provide a role description, as distinct from a parish statement of needs under the Patronage (Benefices) Measure 1986. However, it is difficult to ensure effective ministry without clarifying expectations and setting them out in a role description. In practice this will be an important element of the terms of service package, especially in relation to Ministerial Development Review. The role description should set out the particular duties of the post. It should be agreed with the office holder and regularly reviewed.

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20. What is the status of the role description and whose responsibility is it? What needs to be in it? Is it legitimate to change it over a period of time?

A role description serves as a non-binding (but well understood) guide to the requirements of the appointment. In practice, it is unlikely to be helpful unless it has been agreed by both the bishop and the office holder, and the parish has been involved.

It outlines what needs to be done and what attributes are required in the person doing it. It should help to manage and clarify the expectations of office holders, bishops and parishes. It is a fluid document that changes as the requirements of the role change and should be discussed regularly at ministerial development review to ensure it continues to reflect the nature and requirements of the appointment.

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21. Can someone on Common Tenure be compelled to take on an additional parish or parishes, if this is supported by parishioners and diocese?

This would (as now) have to be done through pastoral reorganisation, and the office holder would have rights of representation. In situations prior to pastoral reorganisation an office holder may be asked to take on additional benefices or parishes as priest in charge or curate in charge but this may only be done with their agreement.

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22. How can the Church be sure the capability procedure is fair?

For further details see the guidance at www.commontenure.org

The capability procedure's primary focus is on enabling clergy performing below an acceptable standard to improve. It can only lead to removal from office after all the other avenues have been explored. The procedure contains many built in safeguards including:

- The right to appeal
- The involvement of a panel, not an individual, at every formal stage,
- The requirement to take human resources advice, and
- The right to be supported by a friend or trade union representative.

It will not be used in trivial or unsubstantiated cases, and can only be invoked by the bishop, archdeacon or someone specifically designated on their behalf, after a thorough investigation of the facts and an interview with the office holder.

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23. What safeguards will there be to prevent the bishop from abusing the capability procedure because of theological disagreements with the office holder?

Under the new arrangements, Common Tenure will provide greater security of tenure than many clergy have now. The capability procedure is not for dealing with ethical and theological disagreements. In any case, it has many safeguards, such as an independent panel and rights of appeal.

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24. Is there a clear way of designating whether in a particular set of circumstances it is more appropriate to use the capability procedure or the Clergy Discipline Measure?

Each case will need to be looked at on its merits. Discipline is more a matter of specific acts, whereas capability is more general. Neglect of duties could be a matter of either capability or discipline.

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25. Will it be possible for "second curacies" to be fixed term appointments?

The circumstances in which a person may be appointed to a Common Tenure post for a fixed term are covered by Regulation 29. These include training posts and also locally supported ministries (subject to the agreement of the Archbishops' Council and Parliament to amendments to the Regulations to bring this about). If someone has finished their training and is then licensed as an assistant curate, he or she could only hold that appointment for a fixed term if it satisfied one of the conditions set out in Regulation 29. In practice, so called second curacies are often likely to be directly funded by the parish, and it may be that the courts would come to the view clergy in such a position were employees of their PCC.

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26. Is there a means under Common Tenure of assigning a priest to a parish on a short-term basis, with a view to ‘turning the parish around’?

Such an appointment should ideally be made in the context of proposals for pastoral reorganisation, which would effectively be ‘put on hold’ for an agreed time while attempts were made to establish whether the parish in question could be restored to viability. In these circumstances the interim minister would be appointed as priest in charge of the benefice or curate in charge of an individual parish, with compensation limited to one year’s loss of office if the initiative failed and the pastoral reorganisation went ahead.

It might also be possible for the DBF to employ one or more ministers under a contract of employment, coupled with a general licence from the bishop, with a remit to provide support to parishes on short-term assignments as directed.

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27. If a post falls within Regulation 29, how should this be reflected in the statement of particulars?

The section of the statement of particulars dealing with termination of appointment will need to state the designation of the particular office under Regulation 29(1), quoting the relevant sub-paragraph, e.g. ‘Your office is designated under Regulation 29(1)(a) as a post created in order to cover the authorised absence from work of the Reverend XY’.

This section of the statement of particulars should also state the fixed term or limiting event, e.g. either ‘*Your tenure of this office will terminate automatically on [dd.mm.yyyy]*’ or ‘*The diocesan bishop may terminate your office by giving no less than x months’ prior notice in writing in the event that the Reverend XY notifies the bishop of his/her intention to return to work*’.

For posts designated under Regulation 29(1) (g) as held in connection or conjunction with another office or employment, the limiting event will generally be that the office-holder ceases to hold that other office or employment.

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28. How should time limited posts due to expire before the appointed day be handled?

Where a licence granted for a term of years is due to expire shortly before the appointed day and the post-holder is to continue in the same office, bishops may want to take advantage of Canon C12 paragraph 6(3), which provides that where no notice is given before the licence expires the minister may continue in office. This obviates the need to issue a further short-term licence to bridge the gap before Common tenure comes into force.

However, this provision does not apply to team vicars, and there seems no alternative in this case to granting a further licence; nominally for a term of years, but on the understanding that the post will be held under Common Tenure with effect from the appointed day.

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29. What will the statement of particulars look like?

Dioceses have been given model templates to adapt to the particular circumstances of each office holder. This has been used to design the statement of particulars issued to you.

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30. What is the relationship between the statement of particulars and the licence (where applicable)?

The licence is the bishop's authority to the office holder to exercise his or her ministry, under Canon C8. The licence and the statement of particulars need to be consistent with one another – for example in the details of the name of the office holder and the title of the benefice, if applicable. It will not always be necessary to issue a new licence immediately when an office holder transfers to Common Tenure – the authority conferred by the existing licence will continue until the expiry of any time limit stated on the licence, at which point it can be renewed either on an open-ended basis or, if the office holder is holding a time-limited Common Tenure post under Regulation 29, for the period applicable to that post.

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31. Does an office holder need to sign their statement of particulars to agree it?

No, but it may be helpful for the office holder to sign an acknowledgement of receipt to demonstrate that the statement of particulars was issued within a month of the office holder taking up the post or moving onto Common Tenure.

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32. Who should be the person nominated under Regulation 3 to issue the statement of particulars?

The bishop can choose whom to nominate for this role, and may nominate more than one person so that provision is made for different categories of office holder – for example, if the diocese has an area scheme, a person for each area. The cathedral administrator will need to be closely involved in the drafting of statement of particulars for cathedral clergy so the bishop may decide to nominate him or her for this purpose. This needs to be agreed between the bishop and cathedral at an early stage. The Archbishops' Secretary for Appointments' office will draft statement of particulars for deans.

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33. What is the significance of identifying a body responsible for the payment of the stipend?

Regulation 3(5) (b) requires that the person or body responsible for the payment of the stipend should be stated in the statement of particulars. However, this does not change the existing legal framework governing such payment. So in most cases the DBF (as the body holding the diocesan stipends fund) will be the body named here, but the provisions of the Diocesan Stipends Funds Measure 1953, which governs how the monies in that fund are to be applied, remain unchanged.

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34. Does the wording of the statement of particulars need to reflect the changes that will be introduced by the Ecclesiastical Fees (Amendment) Measure?

The Ecclesiastical Fees (Amendment) Measure (EF(A)M) is unlikely to be brought into force until after the appointed day for the implementation of Common Tenure. Therefore the wording of the statements of particulars that are initially issued following the appointed day will need to reflect the law as it stands at present. Before the EF (A) M comes into force, suitably amended wording will be provided, and this will need to be sent to relevant office holders under Regulation 6 as a statement of change to the statement of particulars

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35. What should be recorded in the statement of particulars about rest periods and annual leave?

The statement of particulars should record the actual entitlement for the post in question, reflecting, where appropriate, the minimum requirements specified in Regulations 21 and 22.

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36. What about annual retreats and sabbaticals?

Retreats should properly be regarded as part of CME and not as leave. If it is a condition of a sabbatical that the office holder should engage in study related to his or her ministry, this can also be treated as part of CME. Otherwise, a sabbatical would fall within the provision for special leave in Regulation 22(5).

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37. What duties are covered by the right to time off for public duties?

Regulation 26(4) defines 'public duties' as any work done for (a) a public authority, including membership of a court or tribunal, (b) a charity or registered friendly society or (c) a trade union representing ecclesiastical office holders.

This regulation relates to time off and therefore does not include any public role which is part of the office-holder's normal duties -e.g. acting as governor of a school in the benefice. Nor does it include public duties which the office holder is legally bound to undertake, such as jury service or obeying a witness summons. It is intended to allow the office holder scope to engage in activities for the public benefit which is outside the duties of his or her office, while providing a means of ensuring that time spent on such activities is kept within reasonable bounds.

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38. Must there be two separate statements of particulars where two posts are held by the same person?

Where an individual serves in more than one role, it will be necessary first to determine whether the roles comprise:

- one office with integral special duties;
- more than one office;
- an office and a contract of employment.

On this basis a decision should be made as to whether more than one statement of particulars is needed.

It may be acceptable to provide a single composite statement of particulars where a person either (a) holds two or more benefices in plurality under the provisions of the Pastoral Measure 1983 or (b) holds two or more offices which are each designated under Regulation 29(1) (g) as held in connection or conjunction with the other or others. Such a composite statement of particulars should make it clear that it covers more than one office.

Regulation 29 allows a Common Tenure office which is held in conjunction with another office or employment to be expressly linked to that other office or employment, so that it may be terminated if the other element of the role comes to an end. Where the offices are not reciprocally linked (i.e. it would be possible for the office holder to relinquish one without relinquishing the other) then separate statements of particulars should be provided. It would be possible to provide these in one document but it must be understood that, if one

of the posts is relinquished, a revised statement of particulars will need to be issued (for example, if an incumbent of one benefice ceases to be priest in charge also of another). Particular care would need to be exercised when drafting such statements to be clear which terms relate to which post.

Whilst it may not be necessary to split the stipend between the respective offices where they represent a single full time post, the statement of particulars must always specify which office is the one that provides the housing.

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39. What entitlement to stipend does a part-time stipendiary office holder have?

Under Regulation 11(3) the entitlement of a part-time office holder is to such stipend as may be stated in the statement of particulars. So there is no requirement for the stipend in such cases to be calculated on a strict pro-rata basis.

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40. What is the position of associate ministers whose stipend is paid by the parish?

This depends on the nature of the arrangement, which could amount to the associate minister being held to be an employee of the parish. If it does fall within Common Tenure, it can (subject to the agreement of the Archbishops' Council and Parliament to an amendment to the Regulations) be designated as a locally supported ministry under Regulation 29 if

- it is held by an assistant curate who is not in sole or principal charge of the parish in which he or she serves;
- 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.

Note that posts funded by a parish cannot be designated as subject to sponsorship funding under Regulation 29(4), unless some part of the remuneration package is defrayed by a person or body other than the PCC, the DBF, the diocesan parsonages board or the Church Commissioners.

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41. What type of statement of particulars is appropriate for a priest or deacon exercising his or her ministry under a general licence?

This will depend on the kind of ministry exercised by the priest or deacon. In some instances, we understand, general licences are issued to those exercising ministry under a contract of employment, such as hospital or prison chaplains. In such cases, if the chaplain is only exercising ministry in the context covered by the contract, there should be no need for a separate statement of particulars. If, however, he or she is exercising a wider ministry in the diocese, then a statement of particulars (analogous to that for a part-time NSM) should be issued to cover that wider ministry.

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42. What is the position of an office holder on Common Tenure who reaches the age of 70?

Section 3 (10) of the 2009 Measure extends the provisions of the Ecclesiastical Offices (Age Limit) Measure 1975 to all office holders on Common Tenure. This means that all such office holders must retire from the office they then hold on attaining the age of 70, subject to the powers contained in the 1975 Measure in relation to certain specified offices, which permit

an archbishop or bishop to extend the term of office for a limited period (up to one year for bishops, deans, residentiary canons and archdeacons and up to two for incumbents and team vicars).

However, under Regulation 29(1) (b) a person over the age of 70 may be appointed to a Common Tenure office under licence, on either a full or part-time basis, for a fixed or limited term which may be renewed or extended. The purpose of this provision is to enable those who wish to continue to work beyond the age of 70 to do so, but with an inbuilt mechanism to enable both the bishop and the office holder to review the position at stated intervals.

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43. How does Common Tenure affect appointments to Local Ecumenical Projects or Partnerships (LEPs), especially if we appoint someone from another denomination to fill “our” turn?

The new Model Constitution for Single Congregation Partnerships requires that denominational procedures should always apply to ministerial appointments. Whether or not the Model Constitution has been adopted, Anglican clergy appointed to an LEP will enjoy Common Tenure rights. If a minister from another denomination is appointed rather than an Anglican when it is the Church of England’s turn to appoint, that will not give the other denomination’s minister Common Tenure rights. He or she will remain a minister of his or her own denomination, and their tenure of office will depend on the rules of their own denomination.

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44. What is the position of rural/area deans under Common Tenure?

This will depend on the nature of the appointment. The position of rural dean is an ancient office with certain specified canonical responsibilities. In many instances, however, the duties of rural dean are discharged by an incumbent as a temporary addition to his or her responsibilities, in return for a small honorarium. Such an arrangement is probably best recorded on the incumbent’s statement of particulars and in the role description for as long as it lasts, but should not require a separate statement of particulars. However, where a person is appointed as rural dean with an expectation that he or she will devote a specified proportion of his or her time to that work (so that it is effectively a part-time office held in conjunction with another office or employment) then it should be treated as a Common Tenure appointment. There is no provision in such cases for the appointment to be made on a fixed or limited term, unless it falls within one of the existing categories in Regulation 29(1).

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*The Diocese’s **Clergy Handbook** and information about the **provision of housing**, including the duties and responsibilities of the housing provider and office holder, can be found at www.lincoln.anglican.org*

If you do not have access to the internet, or have difficulty in accessing the documents and supporting information to which this document refers, please contact your archdeacon.