

## Assistant Ministers Ordinance 2017

### Explanatory Report

#### Key Points

- The Bill sets out terms for the appointment of deacons and presbyters to assist rectors of parishes.
- The Bill will provide for rectors, with the concurrence of the wardens, to issue notices terminating the appointment of and the payment of stipends/entitlements to assistant ministers and senior assistant ministers.
- The Bill sets out a process that must be followed before such a notice of termination may be issued.
- The Bill will not continue the practice whereby an assistant minister's ceases to hold office 90 days after the appointment of a new rector to the parish if the new rector does not apply to the Archbishop for a continuation of the licence in that period.

#### Purpose of the bill

1. The purpose of the bill for the *Assistant Ministers Ordinance 2017* ("the Bill") is to replace the existing ordinance on the same subject matter and to make changes to the process for issuing notices of termination to assistant ministers and senior assistant ministers.

#### Recommendations

2. That Synod receive this report.
3. That Synod pass the bill as an ordinance of the Synod.

#### Evidence Given

4. The Bill sets out terms for the appointment of deacons and presbyters to assist rectors of parishes. If passed, it will replace the existing *Assistant Ministers Ordinance 1990* (the "Existing Ordinance").

##### *Clause 2 - Definition of terms*

5. The Existing Ordinance defines certain terms by reference to the *Deaconess, Readers and Other Lay Persons Ordinance 1981*. That ordinance has been replaced by the *Authorisation of Lay Ministry Ordinance 2015* (the "2015 Ordinance"). There are no definitions in this 2015 Ordinance that need to be incorporated in the Bill. The reference to the *Interpretation Ordinance 1985* in clause 2(2) is not necessary, except to draw attention to the application of this ordinance.

6. References to "authorisations" in the definitions of "assistant minister" and "senior assistant minister" (and throughout the ordinance) will be deleted to accord with the 2015 Ordinance and the present practice to issue 'licences' to clergy and 'authorities' to lay people.

##### *Subclause 3(1) and 3(2) – Issuing notices to terminate an appointment*

##### The Existing Ordinance

7. Under clause 3(1) of the Existing Ordinance, an assistant minister and senior assistant minister holds office subject to:

- (a) the term of his or her licence, and
- (b) written notice of the termination of any stipend, emolument or perquisite to which the minister is entitled "given by or on behalf of the persons who pay or provide the same."

8. Interpreting the effect of clause 3(1) is not straightforward.

9. Under rule 3.7(1)(e) of Schedule 1 of the *Parish Administration Ordinance 2008*, the wardens who have the function:

"...to pay or provide to the persons entitled to receive them all such stipends, salaries, allowances and benefits as are authorised by the parish council to be paid or provided in accordance with the powers conferred by this or any other ordinance,".

10. This rule adopts the same language as clause 20(1)(j) of the *Church Administration Ordinance 1990* (now repealed).

11. Clause 3(2)(b)(iii)(D) of the Existing Ordinance may evidence an assumption that it is the rector or the parish council of a parish that ordinarily pays or provides stipends etc to assistant ministers. However it is difficult to read clause 3(1) as empowering rectors or parish councils to issue notices of termination given the clear language of the *Parish Administration Ordinance 2008* that wardens "pay or provide" stipends etc.

Rectors also do not have any role in paying or providing stipends etc to assistant ministers under the present ordinances and rules of the Diocese.

12. One reading could be that the wardens act as the representative of the parish council in that it is the parish council that authorises the payment or provision of stipends etc. However such an interpretation overlooks clause 3(4) of the Existing Ordinance which requires the parish council to be consulted before a notice of termination is issued to a senior assistant minister. This suggests it is not the parish council that issues the notice.

13. All told, the most reasonable interpretation is that the wardens of the principal or only church of a parish are empowered to issue notices under clause 3(1) of the Existing Ordinance, subject to consulting the parish council in the case of a senior assistant minister. It is expected that in practice, the wardens would tend to consult more widely, if not seek the approval of the rector and the parish council, but it is not presently a requirement that wardens do so.

14. There have been some situations where there has been significant conflict between the rector, parish council, wardens and assistant minister in relation to who can issue notices of termination and the procedures to be followed before doing so. The indirect manner in which clause 3(1) of the Existing Ordinance is drafted does not assist.

#### The Bill

15. Presently assistant ministers and senior assistant ministers are issued licences that are not subject to any time limit. This means that once a rector nominates an assistant minister or senior assistant minister and that licence is granted, the appointment will only come to an end if the assistant minister or senior assistant minister dies or resigns, a notice of termination is issued by the wardens under the Existing Ordinance, the office ceases 90 days following a new rector being appointed, or the licence is revoked pursuant to an ordinance of the Diocese (such as in the case of a recommendation under a professional standards process). Arguably, rectors should have more direct say in the continued appointment of the clergy who assist them in their parish ministry.

16. Clause 3(1) of the Bill will provide that notices of termination are issued by the rector with the concurrence of the wardens of the principal or only church of the parish, irrespective of whether or not the member of clergy is an assistant minister or a senior assistant minister. This means that the rector will be able to initiate a termination but needs to convince the wardens that termination is appropriate in the circumstances. The parish council could also be involved, though this would not be a requirement.

17. It could be considered that this exposes the wardens and the parish council to financial vulnerability given they are responsible for meeting the cost of paying the parish clergy, and yet would have no direct way of ensuring that the staffing levels of the parish are financially sustainable. However the parish council has other options available to it in such circumstances given its function of setting stipends, authorising payments and setting the budget.

#### *Subclause 3(2) – The process for issuing notices to terminate an appointment*

18. Clause 3(3) of the Bill sets out a process that must be followed before a notice of termination can be issued. The core requirements of the clause are to ensure that –

- (a) there is a valid reason for the notice being issued (namely, unsatisfactory conduct, performance or capacity; that the position will no longer be funded; or the ministry needs of the parish as determined by the rector);
- (b) assistant ministers and senior assistant ministers are given a formal opportunity to understand any grounds or reasons for the proposal and that a notice may be issued under the Ordinance if they are not addressed; and
- (c) assistant ministers and senior assistant ministers are given a reasonable opportunity to provide a response and have that response taken into account in the rector and wardens reaching a decision.

19. Termination of the appointment of an assistant minister can result in conflict between the rector and the assistant minister. Often this is because the assistant minister is unaware their appointment is to be terminated, or insufficiently aware of the grounds for termination. This Bill seeks to provide some help to all parties by providing a clearer process that demonstrates the reasonableness of the actions being taken.

20. This Bill provides opportunity for assistant ministers to improve their performance. This may mean giving the assistant minister specific direction as to what is expected from them in terms of performance in future or providing them with particular training.

21. The Bill will require the regional bishop to be notified before a notice of termination is issued (clause 3(3)(a)). This will provide an opportunity for the regional bishop to confer with the rector in relation to the

decision. It will also mean that the bishop can provide informed support and guidance to the assistant minister or senior assistant minister following any termination.

22. The provision in the Existing Ordinance (clause 3(3)) that a notice must not be given to a senior assistant minister within 3 months of being licensed or appointed is not replicated in the Bill. The process outlined above replaces the need for a qualifying period before a termination can arise.

*Clause 4 – Responsibility of the parish council*

23. This clause replicates the equivalent clause in the Existing Ordinance, except that the requirement for the parish council to “raise funds” has been replaced with responsibility to “set and pay” the stipend etc.

*Clause 5 – Undertaking by rector*

24. This clause replicates the equivalent clause in the Existing Ordinance.

*Clause 6 – Procedure on occurrence of a vacancy*

25. Under the Existing Ordinance (clause 6) an assistant minister (but not a senior assistant minister) ceases to hold office 90 days after a new rector is licensed to the parish unless the assistant minister has resigned earlier or the new rector applies to the Archbishop for continuation of the licence before the 90 days elapse. If the continuance is not sought, the assistant minister’s licence ceases, the assistant minister is then unlicensed.

26. The equivalent clause in the Bill reverses this provision so that an assistant minister continues to hold office after a new rector is licensed to the parish and any obligations set out in the licence of the assistant minister or agreements with the prior rector, the Archbishop and the parish council continue to apply. This is subject to the other provisions of the Bill. The rector will be able to initiate a termination process under clause 3(3) at any time based on unsatisfactory performance, conduct or capacity, or that the assistant minister position is no longer required, or will no longer be funded, or the ministry needs of the parish as determined by the rector no longer require the assistant minister.

27. It is understood that rectors very rarely (if ever) use the existing 90 day provision to terminate the appointment of an assistant minister. The changes provided in the Bill align more with our practice, while still recognising the fact that a rector may not work effectively with a particular individual and may choose to terminate their appointment subject to having a valid reason and following a proper process.

*Clause 7 - Guidelines*

28. Clause 7 provides for the Archbishop-in-Council to issue guidelines with respect to the termination of appointments under the Bill.

29. Subclause 3(3) sets out broad parameters for a termination process. There may be a need for non-binding guidelines to assist rectors and parish councils in determining the most appropriate practices to follow in a given circumstance. Clause 3(3)(f) will require the rector and parish council to have due regard to any guidelines issued by the Archbishop-in-Council concerning the termination of appointments (also see clause 7). Guidelines are yet to be drafted.

*Clause 8 – Commencement, repeal and transitional*

30. Clause 8 commences the Bill on 1 January 2018. It also repeals the Existing Ordinance with effect from the same date, subject to a transitional arrangement that provides for the Existing Ordinance to continue to apply in the case of:

- (a) a notice of termination issued prior to 1 January 2018, and
- (b) a new rector being appointed in a parish prior to 1 January 2018.

For and on behalf of the Standing Committee

ROBERT WICKS  
*Diocesan Secretary*

18 September 2017