

Draft Clergy Discipline (Amendment) Measure

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Schedule – Amendments of Clergy Discipline Measure 2003

A DRAFT OF A MEASURE

To amend the Clergy Discipline Measure 2003; and for connected purposes.

1 Misconduct

- (1) Section 8 of the Clergy Discipline Measure 2003 (in this Measure referred to as “the Measure”) is amended as follows.
- (2) In subsection (1) at the end there is inserted the following paragraph –
“(e) holding preferment without being subject to monitoring.”
- (3) In subsection (3), at the beginning there are inserted the words “Subject to subsection (4) below,”, after the word “unbecoming” there are inserted the words “or inappropriate” and immediately before the word “bishop” there is inserted the word “archbishop,”.
- (4) After subsection (3) there are added the following subsections –
 - “(4) Notwithstanding subsection (3), it shall be unbecoming or inappropriate conduct for any archbishop, bishop, priest or deacon to be a member of or to express, promote or solicit support for a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to the equality of persons or groups of different races.
 - (5) It shall be the duty of the House of Bishops to take appropriate steps to publish any declaration made under subsection (4) above.
 - (6) In subsection (1)(e) “monitoring” means monitoring under section 24 of the Safeguarding Vulnerable Groups Act 2006 and in subsection (4) “race” shall be construed in accordance with section 9 of the Equality Act 2010.”.
- (5) This section shall not have effect in relation to any misconduct which occurred before the date of the coming into force of this section.

2 Penalty by consent

- (1) Section 16 of the Measure is amended as follows.
- (2) After subsection (3) there is inserted the following subsection –
“(3A) Where at any time after the bishop has directed, under section 12(1)(e) above, that the complaint be formally investigated in accordance with section 17 below or after the president of tribunals has

referred the complaint to a disciplinary tribunal, the bishop and the respondent may, if the respondent admits the misconduct which is the subject of the complaint, agree to the imposition of a penalty under this section and the bishop shall, subject to subsection (2) above, proceed accordingly and thereafter no further step shall be taken in regard thereto.”.

3 Right of appeal

- (1) Section 20 of the Measure is amended as follows.
- (2) In subsection (1), at the beginning there are inserted the words “Subject to the following provisions of this section,”.
- (3) After subsection (1) there are inserted the following subsections—
 - “(1A) An appeal by the respondent or the designated officer may only be brought with the leave of the court.
 - (1B) Any application for leave of the court under subsection (1A)—
 - (a) shall be heard jointly by the Dean of the Arches and Auditor and one judge appointed by the president of tribunals from among the persons serving on the provincial panel of the relevant province, who shall be a lay person in the case of an application by the respondent and a person in holy orders in the case of an application by the designated officer;
 - (b) may, if the Dean of the Arches and Auditor so directs, be determined without a hearing; and
 - (c) shall be granted if at least one of the judges considers either that the appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard.
 - (1C) If the court grants the application for leave, it may direct that the issues to be heard on the appeal be limited in such way as the court may specify.”.
- (4) For subsection (2) the following subsections are substituted—
 - “(2) Subject to subsection (3) below, proceedings on an appeal under subsection (1) above shall be heard and disposed of by the Dean of the Arches and Auditor sitting with two persons in Holy Orders and two lay persons appointed by the president of tribunals for the purpose of those proceedings from among the persons nominated to serve on the provincial panel of the relevant province otherwise than by the bishop of the diocese concerned.
 - (3) In the case of an appeal from a decision of the Vicar-General’s court—
 - (a) one of the persons in Holy Orders shall be in Episcopal Orders, whether or not that person has been nominated to serve on the provincial panel mentioned in subsection (2) above, and
 - (b) where the appeal is by an archbishop, subsection (2) shall have effect as if the reference to persons nominated to serve on the provincial panel otherwise than by the bishop of the diocese concerned were a reference to persons (other than the person in Episcopal Orders) nominated to serve on the provincial panel of the other province.

(4) Before the president of tribunals appoints a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) he shall satisfy himself that there is no reason to question the impartiality of that person.

(5) Before appointing a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) the president of tribunals shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

(6) This section shall not have effect in relation to any appeal brought before the date of the coming into force of this section.

(7) Immediately before the coming into force of this section the appointment of any judge under section 3(2)(b) or (c) of the 1963 Measure shall cease to have effect.”.

4 Convictions for criminal offences and matrimonial orders, etc.: priests and deacons

(1) Section 30 of the Measure is amended as follows.

(2) In subsection (1) –

(a) for paragraph (a) there shall be substituted the following paragraph –
“(a) is convicted (whether in England or elsewhere) –

(i) of any offence for which a sentence of imprisonment (including one which is not implemented immediately) is passed on him, or

(ii) of any offence other than a summary offence or, if the offence was committed outside the United Kingdom, an equivalent offence.”;

(b) in paragraph (b), after the words “order of” there is inserted the word “judicial”; and

(c) after paragraph (b), there is added the word “or” and the following paragraph –
“(c) is included in a barred list.”.

(3) After subsection (1) there is inserted the following subsection –

“(1A) In this Measure “barred list” means the children’s barred list or the adults’ barred list established in accordance with Schedule 3 to the Safeguarding Vulnerable Groups Act 2006.”.

(4) In subsection (3), at the beginning there are inserted the words “Subject to subsection (3A) below”, for the words “this section”, there are substituted the words “subsection (1)(a) or (b)” and for the word “sentence” there is substituted the word “conviction”.

(5) After subsection (3), there is inserted the following subsection –

“(3A) The president of tribunals may, on application by the bishop of the relevant diocese, extend the period of two years referred to in subsection (3) above if, after consultation with the priest or deacon concerned, he is satisfied that the bishop did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.”.

- (6) In subsection (7)(a), for the word “sentence” there shall be substituted the word “conviction” and, at the end, there are added the words “or, as the case may be, the date of the decree absolute of divorce or the date of the order of judicial separation”.
- (7) For the heading to section 30 there is substituted the following heading—
“Convictions for criminal offences and matrimonial orders, etc.: priests and deacons”.
- (8) Subsection (2)(a)(ii) above shall not have effect in relation to any conviction occurring before the date of the coming into force of that provision.
- 5 Convictions for criminal offences and matrimonial orders, etc.: bishops and archbishops**
- (1) Section 31 of the Measure is amended as follows.
- (2) In subsection (1) —
- (a) in paragraph (a), for the words following the word “offence” there are substituted the words “mentioned in section 30(1)(a)(i) or (ii) above”;
 - (b) in paragraph (b), after the words “order of” there is inserted the word “judicial”; and
 - (c) after paragraph (b), there is added the word “or” and the following paragraph—
“(c) is included in a barred list.”.
- (3) In subsection (3), at the beginning there are inserted the words “Subject to subsection (3A) below” and for the word “sentence” there is substituted the word “conviction”.
- (4) After subsection (3) there is inserted the following subsection—
“(3A) The president of tribunals may, on application by the archbishop, if the person liable to a penalty under this section is a bishop, or the other archbishop, if the person liable is an archbishop, extend the period of two years referred to in subsection (3) above if, after consultation with the bishop or archbishop concerned, he is satisfied that the archbishop or the other archbishop, as the case may be, did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.”.
- (5) For the heading to section 31, there is substituted the following heading—
“Convictions for criminal offences and matrimonial orders, etc.: bishops and archbishops”.
- (6) Subsection (2)(a) above shall not have effect in relation to any offence mentioned in section 30(1)(a)(ii) above if the offence occurred before the date of the coming into force of subsection (2)(a).
- 6 Suspension of priest or deacon**
- (1) Section 36 is amended as follows.
- (2) In subsection (1), after paragraph (b) there are added the word “or” and the following paragraphs—
“(c) a priest or deacon holding any preferment in a diocese is convicted of any offence mentioned in section 30(1)(a)(ii) above, or

(d) a priest or deacon holding any preferment in a diocese is included in a barred list”.

(3) In subsection (3), after the words “subsection (1)”, in both places where they occur, there are added the words “(a) or (b)”.

(4) After subsection (3) there is added the following subsection—

“(3A) Where a notice of suspension is served under subsection (1)(c) or (d) above and it has not been revoked under subsection (2), the suspension shall continue until the expiry of the period of three months following service of the notice or until a penalty is imposed on the priest or deacon under section 30(1) above, whichever occurs earlier but, if the priest or deacon requests a review under section 30(2), the period of suspension shall continue until the review is concluded.”.

(5) In the heading to section 36, the words after the word “deacon” are omitted.

7 Suspension of bishop or archbishop

(1) Section 37 is amended as follows.

(2) In subsection (1), after paragraph (b) there are added the word “or” and the following paragraphs—

“(c) a bishop or archbishop is convicted of any offence mentioned in section 30(1)(a)(ii) above, or

(d) a bishop or archbishop is included in a barred list”.

(3) For subsection (6) the following subsection is substituted—

“(6) Subsections (3), (3A) and (6) of section 36 above shall apply for the purposes of this section as they apply for the purposes of that section, but as if for any reference to a priest or deacon there were substituted a reference to the bishop or, as the case may be, the archbishop and as if, in subsection (3A), the references to sections 30(1) and 30(2) were references, respectively, to sections 31(1) and 31(2).”.

(4) In the heading to section 37, the words after the word “archbishop” are omitted.

8 Archbishops’ list

(1) Section 38 of the Measure is amended as follows.

(2) In subsection (1), after paragraph (d) there is inserted the following paragraph—

“(dd) whose name is included in a barred list;” and the word “or” shall be inserted immediately before paragraph (e).

(3) In subsection (2)—

(a) for the words “archbishop has” there are substituted the words “archbishops have”;

(b) for the letter “(d)” there are substituted the letters “(dd)”;

(c) for the word “he” in the first place where it occurs, there are substituted the words “the archbishop of the relevant province”; and

(d) for the words “he has done so” there are substituted the words “they have done so”.

- (4) In subsection (3), for the words “archbishop proposes” there are substituted the words “archbishops propose”, for the word “he” there are substituted the words “the archbishop of the relevant province”, for the word “archbishop”, in the last place where it occurs, there is substituted the word “archbishops”, before the words “shall inform” there are inserted the words “the archbishop of the relevant province” and for the word “his” there is substituted the word “their”.
- (5) In subsection (4), for the word “archbishop” there is substituted the word “archbishops”.

9 Amendments and repeals

- (1) The minor amendments to the Measure set out in the Schedule have effect.
- (2) Section 3 of the Ecclesiastical Jurisdiction Measure 1963 shall be amended as follows.
- (3) For subsections (2)(b) and (c) there is substituted the following paragraph—
“(b) for the purposes of proceedings on an appeal under section 20 of the Clergy Discipline Measure 2003, four shall be appointed in accordance with subsections (2) and (3) of that section” and paragraph (d) shall be re-numbered “(c)”.
- (4) Subsection (4) is repealed.
- (5) For subsection (5) there shall be substituted the following subsection—
“(5) The appointment of the Dean of the Arches and Auditor shall be for a period beginning with the date of the appointment and ending with the date on which he attains the age of seventy-five years, but—
 - (a) he may resign his office by instrument in writing under his hand addressed to, and served on, the archbishops of Canterbury and York,
 - (b) he may be removed by the archbishops of Canterbury and York jointly if the Upper Houses of the Convocations of the provinces of Canterbury and York each resolve that he is incapable of acting or unfit to act, and
 - (c) he may continue to act as a judge for the purpose of any proceedings in either Court during the course of which he attains the age of seventy-five years as if the date of the conclusion of the proceedings were the date on which he attains that age.”.
- (6) in subsection (7), for the words “(b) or (c)” there shall be substituted the letter “(b)”.
- (7) In section 7(2)(a), after the words “in a disciplinary case,” there are inserted the words “with the leave of the court in accordance with section 20(1A) and (1B) of the Clergy Discipline Measure 2003,”.
- (8) In section 10 of the Ecclesiastical Fees Measure 1986, in the definition of “ecclesiastical judges”, after the words “deputy president of tribunals” there are inserted the words “and the chairmen of disciplinary tribunals”.

10 Citation, commencement and extent

- (1) This Measure may be cited as the Clergy Discipline (Amendment) Measure 20...

- (2) This section shall come into force on the day on which this Measure is passed and the other provisions of this Measure shall come into force on such day as the Archbishops of Canterbury and York may jointly appoint and different days may be appointed for different provisions or for different purposes.
- (3) This Measure extends to the whole of the provinces of Canterbury and York except the Channel Islands and the Isle of Man, but the provisions of the Measure may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and, if an Act of Tynwald or an instrument made under an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.

SCHEDULE

Section 9

AMENDMENTS OF CLERGY DISCIPLINE MEASURE 2003

- 1 The Clergy Discipline Measure 2003 is amended as follows.
- 2 In section 21(4), for the words “No person” there are substituted the words “No lay person”.
- 3 Section 23 is amended as follows—
- (a) in subsection (1)(a), after the word “respondent” there are inserted the words “or he is otherwise unable to act” and for the words “relevant provincial panel of the province other than that in which the bishop serves” there are substituted the words “provincial panel of either province”;
 - (b) for subsection (1)(b) there shall be substituted the following paragraph—
“(b) two persons in Holy Orders appointed by the president of tribunals, of whom one shall be in Episcopal Orders and the other shall be appointed from among those nominated to serve on the provincial panel of the province other than that in which the bishop serves;”;
 - (c) in subsection (2)(a), after the word “respondent” there are inserted the words “or he is otherwise unable to act”.
- 4 For section 34 there is substituted the following section—
“34(1) A person in Holy Orders in respect of whose marriage a decree nisi of divorce has been made absolute or an order of judicial separation has been made shall be under a duty, within the period of twenty-eight days following the decree or order,—
- (a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,
 - (b) in the case of a bishop, to inform the archbishop concerned, and
 - (c) in the case of an archbishop, to inform the other archbishop,—
 - (i) of the decree or order,
 - (ii) as to whether he was the respondent in the proceedings, and
 - (iii) if he was the respondent, of any finding of adultery, unreasonable behaviour or desertion against him and of the details or particulars of the conduct which led to any such finding.
- (2) Failure to comply with the requirements of subsection (1) shall be regarded as a failure to do an act required by the laws ecclesiastical for the purposes of section 8(1) above.”.
- 5 In section 36(1)(b), after the word “arrested” there are inserted the words “(whether in England or elsewhere)”.
- 6 In section 37(1)(b), after the word “arrested” there are inserted the words “(whether in England or elsewhere)”.

- 7 In section 39, for subsection (3) there shall be substituted the following subsections—
- “(3) A Code of Practice shall be laid in draft before the General Synod and, if it is approved by the General Synod without amendment, the Code shall be issued by the Clergy Discipline Commission.
- (3A) If the Code has been approved by the General Synod with amendment, it shall be referred to the Clergy Discipline Commission.
- (3B) Where a draft Code of Practice is referred to the Clergy Discipline Commission under subsection (3A) above, then the Commission may either -
- (a) issue the Code as so amended, or
- (b) withdraw the Code for further consideration in view of any amendment by the General Synod,
- and the Code shall not come into force until it has been approved by the General Synod and issued by the Commission.”.
- 8 In section 44—
- (a) subsection (1) is repealed; and
- (b) in subsection (4), for the words “provincial registrar” there are substituted the words “provincial registrars”.
- 9 In section 45(2)(a), for the words “Measure 1990” there are substituted the words “Measures 1990 and 1994”.