

GENERAL SYNOD

DRAFT CLERGY DISCIPLINE (AMENDMENT) MEASURE

Explanatory Memorandum

Introduction

1. The Clergy Discipline Measure 2003 ('the 2003 Measure') has been fully in force since 1st January 2006. It provides procedures which enable bishops to deal with the vast majority of formal complaints about clergy misconduct (other than complaints relating to doctrine, ritual or ceremonial, which come within the provisions of the Ecclesiastical Jurisdiction Measure 1963). For the small proportion of cases that cannot be resolved by bishops the 2003 Measure has established a modern tribunal system which is compliant with human rights legislation. A summary of the procedures under the 2003 Measure can be found in the Annex to GS 1808X, which was circulated in November 2010 concerning proposed changes to the Code of Practice.
2. As explained more fully in GS 1808X, in October 2008 the Clergy Discipline Commission (as the body responsible for overseeing the operation of the 2003 Measure) published a consultation paper setting out its views on certain issues. The paper was widely circulated and the Commission received many helpful and constructive contributions about the 2003 Measure and its operation in practice. Having considered and analysed all the contributions the Commission issued its response in June 2009, which was circulated to all those who had been included in the consultation. It was also circulated to members of the General Synod as GS 1747B.
3. In July 2009 the General Synod passed a motion which welcomed the Commission's response in GS 1747B, and invited the Archbishops' Council to seek a report from the Commission on whether there was a case for bringing forward draft legislation early in the lifetime of the new Synod to amend the 2003 Measure or the Code of Practice made under it ('the Code').
4. The Commission thereafter assessed what changes to the 2003 Measure and the Code were needed and in June 2010 duly reported to the Archbishops' Council with its proposals for amendments to both the 2003 Measure and the Code. The Commission proposed changes to the Code that could be implemented immediately without amending the 2003 Measure. Those amendments (set out in GS 1808 and GS Misc 967) were due to be considered at the November 2010 group of sessions but were not reached for lack of time. The Commission also recommended changes to the 2003 Measure. Consequently, at the forthcoming February group of sessions, Synod will be asked to consider both the proposed changes to the Code, and, at First Consideration Stage, amendments to the 2003 Measure in the form of the draft Clergy Discipline (Amendment) Measure ('the Amendment Measure').

5. The draft Amendment Measure will make both substantive and technical changes to the 2003 Measure. Members of Synod should refer to GS Misc 976 to see the form the 2003 Measure would take if amended by the Amendment Measure.

Clause 1: Misconduct

6. This makes two major changes as to what can constitute misconduct for the purposes of the 2003 Measure. The first is in response to the Safeguarding Vulnerable Groups Act 2006 which introduces a vetting and barring scheme in relation to children and vulnerable adults, and the second is to implement a resolution of the General Synod carried in February 2009 concerning membership of organisations that are incompatible with race equality.

Safeguarding Vulnerable Groups

7. The Safeguarding Vulnerable Groups Act 2006 ('the SVGA') set up a new body, known as the Independent Safeguarding Authority ('ISA'), to prevent unsuitable people from working with children and vulnerable adults. The intention was that unsuitable people were to be entered on one or both of two ISA 'barred lists' (one in respect of working with children, the other with vulnerable adults). Individuals who were convicted of certain criminal offences would automatically be barred. Others would be placed on the barred lists by ISA after it had received information originating from parties such as employers, social services, regulatory bodies or concerned members of the public.
8. The scheme behind the SVGA was that certain activities in relation to children and vulnerable adults were to be regulated. Any person wishing to work (including by undertaking voluntary work) in a 'regulated activity' would be obliged to apply to ISA to be subject to monitoring, but this would only apply where that person was carrying out the activity with the permission of a 'regulated activity provider'. A 'regulated activity provider' is defined in the SVGA as a person who is responsible for the management and control of a regulated activity and makes arrangements for another person to engage in that activity.
9. Bishops do not fall within the definition of 'regulated activity provider' in relation to their clergy. Consequently, there would be no obligation on clergy to register with ISA, and they would not be monitored within the statutory framework. In keeping with the Church's policies on child protection and safeguarding vulnerable adults and to oblige clergy to apply to ISA to become subject to monitoring, **clause 1(2)** of the Amendment Measure will provide that a complaint may be instituted against clergy holding preferment who fail to make an application to ISA for monitoring.
10. A statutory instrument has been made under powers conferred by the SVGA that enables diocesan bishops to check with ISA whether their clergy are subject to monitoring and to register an interest so that they are notified by the relevant authority if one of their clergy is entered on a barred list and hence ceases to be subject to monitoring.
11. On 15th June 2010, following the change in government, the Home Secretary announced that further implementation of the vetting and barring scheme under

the SVGA would be suspended pending a review of the scheme, and that the review would report early in 2011. At the present time, the outcome of the review is still awaited. **Clause 1(2)** of the Amendment Measure proceeds on the assumption that the fundamental structure of the vetting and barring scheme set up by the SVGA will not be altered as a result of the review. If, however, the government's review recommends that there should be changes to the scheme, appropriate amendments to **clause 1** could be made by Synod in later stages of the legislative process to accommodate those changes.

Membership of certain organisations

12. At the 2009 February group of sessions the General Synod resolved:

'That this Synod, noting that in 2004 the Association of Chief Police Officers adopted a policy whereby "no member of the Police Service, whether police officer or police staff, may be a member of an organisation whose constitution, aims, objectives or pronouncements contradict the general duty to promote race equality" and "this specifically includes the British National Party", request the House of Bishops to formulate and implement a comparable policy for the Church of England, to apply to clergy, ordinands, and such employed lay persons as have duties that require them to represent or speak on behalf of the Church.'

13. Section 8(3) of the 2003 Measure currently provides that no proceedings in respect of unbecoming conduct shall be taken in respect of the lawful political opinions or activities of any bishop, priest or deacon. Parties such as the BNP are not illegal organisations, so it is not misconduct for the purposes of the 2003 Measure for a member of the clergy to join the BNP or to solicit support for it. In order to give effect to the Synod's resolution of February 2009, **clause 1(4)** of the Amendment Measure will change this position by making it unbecoming or inappropriate conduct for the purposes of the 2003 Measure for clergy to be members of, or to express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing to be incompatible with the teaching of the Church of England in relation to race equality. The House of Bishops will be required to publish any such declaration.

Clause 2

14. In cases where misconduct is admitted by the respondent but the respondent and the bishop cannot agree as to the appropriate penalty, a complaint currently has to be referred to the Designated Officer, and thereafter to the President, so that the matter can be put before a tribunal for consideration of the appropriate penalty. **Clause 2** will enable a bishop and respondent to agree upon a penalty by consent even after the complaint has been referred to the Designated Officer.

Clause 3

15. A respondent currently has an absolute right to appeal on questions of law or fact and in respect of any penalty imposed. An appeal is made to the Arches Court of Canterbury or the Chancery Court of York as appropriate, and is heard by five

members of the court. In the case of an unmeritorious appeal this is not considered to be an appropriate use of the Church's human and financial resources. Moreover, since no penalty imposed by a tribunal can be implemented until an appeal has been determined, the right to appeal can be open to abuse by a respondent who decides to appeal so as to delay, until the appeal has been disposed of, the imposition of the penalty and (in cases of removal from office) the point at which stipend ceases to be payable.

16. The consultation undertaken by the Commission revealed strong support for the proposal that section 20 of the 2003 Measure be amended to require both the respondent and the Designated Officer to obtain permission to appeal before an appeal can be made. **Clause 3** gives effect to this proposal. An application for permission to appeal would be made in writing explaining the grounds, and, in the court's discretion, disposed of with or without a hearing. The application for permission to appeal would be considered by two people, one of whom would be the Dean of the Arches and Auditor, and the other a lay member of the relevant provincial panel in the case of an application by a respondent, or an ordained member of the provincial panel in the case of an application by the Designated Officer. If either member of the court considered there was a real prospect of success, then permission would be granted. This process would enable unmeritorious appeals to be disposed of efficiently and speedily, and where permission was granted, the real issues in an appeal would be identified at an early stage enabling the court to deal with the case more effectively.
17. **Clause 3** will also make changes to the composition of the appellate court, by providing that any judge of the court, other than the Dean of the Arches and Auditor, was appointed solely for the purposes of the appeal in question and was not to be appointed if he or she had been nominated to serve on the provincial panel by the bishop of the diocese concerned. This will bring the practice of appointing appellate judges in to line with the appointment of members of a disciplinary tribunal.

Clause 4

18. This extends the bishop's power to impose a penalty under section 30 of the 2003 Measure without further proceedings following conviction for a criminal offence. Presently, a bishop can do so only where the court has passed a sentence of imprisonment (whether or not suspended). This has attracted strong criticism in relation to individual cases where, under present sentencing guidelines in the criminal courts, cases of serious criminal misconduct (such as downloading and possessing obscene material in relation to children) have resulted in non-custodial sentences.
19. **Clause 4** will set the threshold for defining serious criminal misconduct as an offence other than a summary offence - i.e. a criminal offence that is not triable solely in the Magistrates Court. As with the present position, the bishop will have a discretion in all the circumstances of the case as to whether to impose a penalty following a serious criminal conviction, and before he does so he will continue to be required to consult the President of Tribunals. The priest or deacon concerned will continue to have the right to ask the relevant Archbishop to review the bishop's decision.

20. **Clause 4** will also enable the bishop to apply to the President of Tribunals for an extension in the two year period within which he must act under section 30 of the 2003 Measure when imposing a penalty following a criminal conviction or a divorce court's decree absolute for adultery, unreasonable behaviour or desertion. A priest or deacon is already under a duty to notify the bishop of a conviction or decree absolute, but if the priest fails to notify the bishop, then at present the two year period could expire without the bishop learning of the conviction or decree absolute. Under **clause 4** the President would be able to extend the two year period, but only if satisfied that the bishop did not know of the conviction or decree absolute.
21. **Clause 4** will also enable the bishop to remove a priest or deacon from office who has been included in a barred list under the SVGA (see paragraphs 7 to 10 above).

Clause 5

22. This applies to the case of bishops and archbishops similar provisions relating to convictions and decrees absolute as those applying under **clause 4** to priests and deacons.

Clause 6

23. **Clause 6** will enable the bishop to suspend a priest or deacon after conviction whilst the bishop considers whether to impose a penalty, and, if appropriate, implements it under section 30(1)(a). At the moment, a suspension must come to an end when the criminal court proceedings are concluded.
24. **Clause 6** will also enable the bishop to suspend a priest or deacon on an SVGA barred list whilst the procedure for removal from office is followed.

Clause 7

25. This applies in the case of bishops and archbishops similar provisions relating to suspension as those applying under **clause 6** to priests and deacons.

Clause 8

26. This clause concerns the Archbishops' list, which is maintained under section 38 of the 2003 Measure and includes details of (*inter alia*) clergy upon whom a penalty has been imposed under the 2003 Measure. Bishops refer to the Archbishops' list when making appointments or granting permissions to officiate in their diocese. **Clause 8** will provide for a new category in the Archbishops' list, namely clergy whose names are included in an SVGA barred list.
27. **Clause 8** also makes a number of technical amendments to section 38 of the 2003 Measure to clarify that the Archbishops act jointly when compiling and maintaining the list.

Clause 9

28. This principally makes amendments to the Ecclesiastical Jurisdiction Measure 1963 that are consequential to the provisions in **clause 3**.

Clause 10

29. **Clause 10** deals with citation of the Measure, commencement, and extension to the Channel Islands and the Isle of Man.

The Schedule

30. The Schedule contains a number of technical revisions to modify, correct or clarify the text of the 2003 Measure in certain places.
31. **Paragraph 2** relates to the make-up of the provincial panels from whom members of a tribunal are appointed. The proposed change will clarify that section 21(4) of the Measure applies to lay persons only.
32. **Paragraph 3** will enable the Vicar-General, when unable to act for any reason, to stand down from hearing a complaint made against a bishop or archbishop: at the moment under section 23 of the 2003 Measure the Vicar-General can only stand down if personally acquainted with one of the parties to the complaint. The Vicar-General would be replaced by a Chair appointed from either provincial panel in the case of a complaint made against the bishop, and by a Chair appointed from the other provincial panel in the case of a complaint made against an archbishop.
33. **Paragraph 3** also makes provision in respect of complaints against a bishop, so that the clerical member of the court who is not a bishop is to be appointed from the provincial panel of the other province.
34. **Paragraph 4** supplements the provisions of section 34 of the 2003 Measure by clarifying the matters that should be disclosed to the bishop, or archbishop as the case may be, in respect of a matrimonial breakdown.
35. **Paragraphs 5 and 6** clarify and confirm that powers of suspension arise following an arrest whether the arrest takes place in England or elsewhere.
36. **Paragraph 7** concerns the procedure for amending the Code. It provides that the Clergy Discipline Commission would have an opportunity to reflect further upon a draft Code of Practice in the light of any amendments that might be made by Synod, but this new provision will maintain the present position that the final form of a Code of Practice cannot be issued without the approval of the General Synod.
37. **Paragraphs 8 and 9** make minor corrections to the text of the 2003 Measure.

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