

DRAFT

THE CLERGY DISCIPLINE (BAILIWICK OF GUERNSEY) ORDER 2006

Made 2006

Coming into operation 2006

At the Court at Buckingham Palace

the day of 2006

PRESENT

The Queen's Most Excellent Majesty in Council

WHEREAS the Bishop of Winchester has, in accordance with the Schedule to the Channel Islands (Church Legislation) Measure 1931, as amended by section 2 of the Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, settled the Scheme set out in the Schedule to this Order for applying the Clergy Discipline Measure 2003 and the Church of England (Legal Aid) Measure 1994 to the Island and Bailiwick of Guernsey and its dependencies, and the procedure set out in the Schedule to the first-mentioned Measure has been followed and the Scheme has been approved by the General Synod.

NOW, THEREFORE, HER MAJESTY, in pursuance of section 2 of the Channel Islands (Church Legislation) Measure 1931, as amended by section 1 of the Channel Islands (Church Legislation) Measure 1931 (Amendment) Measure 1957, of section 48(3) of the Clergy Discipline Measure 2003 and of section 6 of the Church of England (Legal Aid) Measure 1994, is pleased, by and with the advice of Her Privy Council, to order and direct as follows:

1. This Order may be cited as the Clergy Discipline (Bailiwick of Guernsey) Order 2006 and shall come into operation on the day of 2006.
2. The Scheme set out in the Schedule to this Order is hereby confirmed.
3. The Clergy Discipline Measure 2003 and the Church of England (Legal Aid) Measure 1994 shall apply to the Island and Bailiwick of Guernsey and its dependencies in accordance with the provisions of the said Scheme.

SCHEDULE

A SCHEME

Prepared by the Bishop of Winchester in pursuance of the Channel Islands (Church Legislation) Measures 1931 and 1957 for applying the Clergy Discipline Measure 2003 and the Church of England (Legal Aid) Measure 1994 to the Island and Bailiwick of Guernsey and its dependencies.

Preamble

Whereas section 48(3) of the Clergy Discipline Measure 2003 provides that that Measure may be applied to the Channel Islands or either of them, as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, in accordance with those last-mentioned Measures.

And whereas section 6 of the Church of England (Legal Aid) Measure 1994 provides that that Measure may be applied to the Channel Islands or either of them, as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, in accordance with those last-mentioned Measures.

And whereas the Bishop of Winchester, acting in accordance with paragraphs 1 to 3 of the Schedule to the Channel Islands (Church Legislation) Measure 1931, has come to the conclusion that the Clergy Discipline Measure 2003 and the Church of England (Legal Aid) Measure 1994 ought to be applied to the Island and Bailiwick of Guernsey and its dependencies, and has prepared the following draft Scheme for that purpose.

Scheme

Application of the Clergy Discipline Measure 2003.

1. In the application to the Island and Bailiwick of Guernsey and its dependencies of the Clergy Discipline Measure 2003:
 - (a) in section 2, for “for the diocese in question” substitute “for the deanery”;

(b) omit section 3;

(c) for section 4 substitute:

“The Panel Chairman

4. The panel chairman shall exercise the functions conferred on him by this Measure and in addition shall have the following duties –

- (a) to issue practice directions;
- (b) to act as the chairman of a disciplinary tribunal where, in his opinion, an important point of law or principle is involved;
- (c) to exercise such other functions as may be prescribed.”;

(d) omit section 5;

(e) for section 6 substitute:

“Jurisdiction in disciplinary proceedings.

6. (1) A disciplinary tribunal constituted for the deanery has jurisdiction to hear and determine disciplinary proceedings under this Measure against any clerk in Holy Orders -

- (a) who, when the misconduct complained of is alleged to have been committed, held preferment in the deanery or was resident therein, but subject to subsections (2) and (3) below; or
- (b) who is alleged to have officiated as a minister in the deanery without authority; or
- (c) who is resident in the deanery when the complaint is made.

(2) Where disciplinary proceedings in respect of any matter are instituted under section 10 of this Measure as it has effect in England on the basis of any preferment held there, no such proceedings in

respect of the same matter shall be instituted in the deanery on the basis of residence therein, and any such proceedings previously instituted on that basis shall be discontinued.

(3) Where disciplinary proceedings in respect of any matter are instituted under section 10 of this Measure as it has effect in England on the basis of officiating as a Minister without authority there, no such proceedings in respect of the same matter shall be instituted in the deanery on the basis of preferment or residence therein, and any such proceedings previously instituted on that basis shall be discontinued.”;

(f) in section 7(2), for “in accordance with the 1963 Measure” substitute “as heretofore”;

(g) in section 9, for “the president of tribunals” substitute “the panel chairman”;

(h) for section 10(1) substitute:

“(1) Disciplinary proceedings under this Measure may be instituted against any person who is subject to the jurisdiction of a disciplinary tribunal by virtue of section 6 above by -

(a) a churchwarden of any parish which has a proper interest in making the complaint; or

(b) any other person who has a proper interest in making the complaint.”;

(i) in section 11(1):

(i) for “registrar of the diocese or province concerned, as the case may be,” substitute “registrar of the Ecclesiastical Court”;

(ii) omit “parochial church council or other”;

(iii) immediately after “the respondent” insert “and the Dean”;

(j) in sections 11(3), 13(2) and 14(4), immediately after “the respondent”, wherever appearing, insert “and the Dean”;

- (k) in section 16(4), for “registrar of the diocese concerned” substitute “registrars of the diocese concerned and of the Ecclesiastical Court”;
- (l) in section 17:
 - (i) for “president of tribunals”, wherever appearing, substitute “panel chairman”;
 - (ii) omit “or the Vicar-General’s court, as the case may be,”, wherever appearing;
 - (iii) immediately after “bishop”, in subsection (5), insert “, the Dean”;
- (m) in section 18:
 - (i) for “president of tribunals” substitute “panel chairman”;
 - (ii) for “High Court” substitute “Royal Court”;
 - (iii) omit “or court”, wherever appearing;
 - (iv) insert the following additional paragraph immediately after subsection (3)(c):
 - “(d) the tribunal shall have regard to any codes of practice and general policy guidance issued by the Clergy Discipline Commission under this Measure as it has effect in England, and to any adaptations and/or modifications made to such codes or guidance under section 39 below.”;
- (n) in section 19:
 - (i) omit “or the Vicar-General’s court” and “or court”, wherever appearing;
 - (ii) for paragraphs (a) and (b) in subsection (2) substitute “the Dean, the bishop of the diocese concerned, the archbishop concerned, or, if the respondent is an archbishop, the other archbishop”;

- (iii) immediately before “the bishop”, wherever else appearing, insert “the Dean,”;
- (iv) insert the following additional subsection immediately after subsection (2):

“(2A) In considering the imposition of a penalty the tribunal shall have regard to any general advice given by the Clergy Discipline Commission under this Measure as it has effect in England, and to any adaptations and/or modifications made to such advice under section 39 below.”;

- (o) in section 20:

- (i) omit “or the Vicar-General’s court”;

- (ii) for all the words in subsection (1) from “to the Arches Court” to “the province of York)” inclusive substitute “to a Commission appointed specifically for the purpose of hearing that appeal from an appellate panel established by the Dean of Arches and Auditor following consultation with the Dean of Guernsey.”;

- (iii) for subsection (2) substitute:

- “(2) Any Commission under this section shall be appointed by the Dean of Arches and Auditor, and shall comprise a President who shall be an appropriately qualified lawyer, two lay persons, and two persons in Holy Orders.”;

- (iv) immediately after subsection (2), as so substituted, insert:

“(3) One member (but not more than one member) of any Commission appointed under this section must be resident in the deanery; its proceedings shall be conducted in the deanery; and its procedures and powers shall, subject to any rules made under section 45 below, be the same, as far as may be, as those of the Arches Court of Canterbury.”;]

- (p) for sections 21 and 22 substitute:

“Composition of the deanery panel and disciplinary tribunals

The deanery panel.

21. (1) It shall be the duty of the Deanery Synod Standing Committee to compile and maintain, in accordance with the provisions of subsection (2) below, a list (hereinafter referred to as “the deanery panel”) of persons available for appointment under the following provisions of this Measure as members of a disciplinary tribunal.

(2) The deanery panel shall contain the names of –

- (a) a panel chairman and four other appropriately qualified lawyers;
- (b) ten lay persons;
- (c) ten persons in Holy Orders;

in each case nominated by the Dean, after consultation with the Bishop of Winchester and the standing committee of the Guernsey deanery synod.

(3) No lay person who is not an actual communicant of the Church of England shall be nominated to serve on the deanery panel.

(4) Persons nominated to serve on the deanery panel shall so serve for a period of six years, (but half of the persons initially nominated within each category (to be determined by agreement or, failing agreement, by lot) shall retire after three years); and a person retiring from the panel shall be eligible to be nominated to serve for not more than one further period of six years.

(5) Where the period of service of a person nominated to serve on the deanery panel expires while he is a member of a disciplinary tribunal to which proceedings under this Measure are referred, he shall continue to be a member of the tribunal until the completion of the proceedings.

(6) Where a casual vacancy occurs on the deanery panel the Dean may nominate a person to fill the vacancy, and the provisions of subsection (2) and (3) above, relating to qualification and consultation shall apply for the purposes of this subsection as they applied

for the purposes of the nomination of the person whose place he takes on the deanery panel.

(7) Any person nominated to fill a casual vacancy shall serve only for the unexpired term of service of the person whose place he takes on the deanery panel.

Disciplinary tribunals.

22. (1) A disciplinary tribunal shall consist of five members as follows -

- (a) the chairman, who
 - (i) where in his opinion any important point of law or principle is involved, shall be the panel chairman, or
 - (ii) in any other case, shall be appointed by the panel chairman from those nominated under section 21(2)(a) to serve on the deanery panel;
- (b) two lay persons, appointed by the panel chairman from those nominated under section 21(2)(b) to serve on the deanery panel; and
- (c) two persons in Holy Orders, appointed by the panel chairman from those nominated under section 21(2)(c) to serve on the deanery panel.

(2) The panel chairman shall not appoint any person to be a member of a disciplinary tribunal unless he is satisfied that there is no reason to question the impartiality of

that person; and before doing so he shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

(3) At least one member, but not more than two members, of every disciplinary tribunal must be resident in the deanery

(4) However, where the respondent holds preferment in the deanery, or held preferment in the deanery when the misconduct complained of is alleged to have been committed, no person in Holy Orders who currently holds preferment in the Deanery shall be appointed as a member of that disciplinary tribunal.”;

(q) omit section 23;

(r) in section 25 omit “or Vicar-General’s court, as the case may be,” from subsection (1), “or court” from subsection (2), and “or the Vicar General’s court, as the case may be,” from subsection (4);

(s) in sections 26 and 27 omit “or the 1963 Measure”, “and deposition”, “or deposition” and “or deposed”, wherever appearing;

(t) in section 30

(i) in paragraph (1)(a), for “England” substitute “the Bailiwick of Guernsey”;

(ii) in subsection (2), immediately after “the president of tribunals,” insert “and, if that person is resident or holds preferment in the deanery, with the Dean and with the panel chairman,”;

(iii) in subsection (5), for “and to the registrar of the diocese concerned” substitute “,to the registrar of the diocese concerned, and, if the person penalised is resident or holds preferment in the deanery, to the registrar of the Ecclesiastical Court”;

(u) in sections 31(1)(a) and 33(1), for “England” substitute “the Bailiwick of Guernsey”;

- (v) in section 35:
 - (i) in subsection (1) for “as they apply for the purposes of that Measure” substitute “notwithstanding section 84 of that Measure”;
 - (ii) immediately after paragraph (2)(g) insert:
 - “(h) in section 61(1) for all the words following “by proceedings”, where first appearing, there shall be substituted “in the Royal Court”;
 - (i) in section 62(1) the words “and the Vicar General’s court for the purpose of proceedings instituted under section 4 of the Care of Cathedrals (Supplementary Provisions) Measure 1994” shall be omitted;
 - (j) in section 63, the reference to the Ecclesiastical Fees Measure 1986 shall be construed as a reference to that Measure as it has effect in England;
 - (k) in sections 74(1) and 76(1), immediately after “this Measure” there shall be inserted “for a specified time”;
 - (l) in section 76, for all the words from (and including) “and subject to the provisions of the following subsection” to the end of subsection (1) there shall be substituted “vest in the Crown”; and subsection (2) shall be omitted;

- (m) in section 80, immediately after “in any place” there shall be inserted “in the deanery”;
- (n) in sections 81 and 83(2), for “High Court” wherever appearing, there shall be substituted “Royal Court”; and subsection (4) of section 81 shall be omitted.”;
- (w) in section 38(4), immediately after “prescribed” insert “by rules made under this Measure as it has effect in England”;
- (x) for section 39 substitute;

“Codes of practice and general advice

39. (1) It shall be the duty of the Deanery Synod Standing Committee from time to time to consider what, if any, adaptations and modifications ought to be made in the application in the deanery of any guidance promulgated in a Code of Practice approved (or deemed to have been approved) by the General Synod, and of any general advice and policy guidance given by the Clergy Discipline Commission, pursuant to this Measure as it has effect in England.

(2) If and to the extent that the Standing Committee, after consulting the bishop, considers that such adaptations and/or modifications ought to be made, the Committee shall promulgate them and lay them before the Deanery Synod.

(3) Such adaptations and modifications shall not come into force until approved by the Deanery Synod.

(4) Every person exercising functions, or otherwise involved in proceedings, under this Measure is hereby enjoined to have regard to any such Code of Practice, general advice and policy guidance,

and to any adaptations and/or modifications made thereto under this section.”;

- (y) at the end of the words in section 41 insert “, as those provisions apply in England”;
- (z) for subsections (1) and (2) of section 43 substitute:

“(1) In this Measure, unless the context otherwise requires -

“the 1963 Measure” means the Ecclesiastical Jurisdiction Measure 1963 as amended, as that Measure has effect in England;

“appropriately qualified lawyer” means an Advocate of the Royal Court of Guernsey or the Royal Court of Jersey, a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, or a Solicitor of the Supreme Court of England and Wales, or of the Supreme Court of Judicature of Northern Ireland, or of Scotland, in each case of at least seven years’ standing;

“clerk in Holy Orders” includes any archbishop, bishop, priest or deacon;

“the Dean” means the Dean of Guernsey;

“the deanery” means the deanery of Guernsey;

“designated officer” means an officer of the legal office of the National Institutions of the Church of England designated by the Archbishops’ Council for the purposes of this Measure;

“diocese” means a diocese in the province of Canterbury or a diocese in the province of York, and “diocesan” shall be construed accordingly;

“disciplinary tribunal” means a disciplinary tribunal constituted in accordance with section 22 above;

“the Ecclesiastical Court” means the Ecclesiastical Court of Guernsey;

“limited prohibition” has the meaning assigned to it by section 24(1)(b) above;

“misconduct” means any act or omission referred to in section 8(1) above;

“panel chairman” means an appropriately qualified lawyer nominated in accordance with

section 21(2) above as the chairman of the deanery panel;

“preferment” includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, the office of Dean, a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty;

“prescribed” means prescribed by rules made under section 45 of this Measure;

“the president of tribunals” means the person holding that title by virtue of sections 3 and 4 of this Measure as it has effect in England;

“prohibition for life” has the meaning assigned to it by section 24(1)(a) above, and “prohibited for life” shall be construed accordingly;

“relevant province” means, according to the context, the Province of Canterbury or the Province of York;

“resident” means ordinarily resident;

“Royal Court” means the Royal Court of Guernsey.

(2) References in this Measure to a decree of divorce being, or being made, absolute include reference to, or to the making of, a final order of divorce.”;

(aa) omit section 44 (and both schedules);

(bb) for section 45 substitute:

Rules

45. (1) The Deanery Synod Standing Committee may, after consulting the bishop, make rules for carrying into effect the provisions of this Measure.

(2) Rules made under subsection (1) may in particular make provision for -

(a) regulating the procedure and practice (including the mode and burden of proof and admissibility of evidence) of disciplinary tribunals and commissions;

(b) the appointment and duties of officers of, or responsible to, disciplinary tribunals and commissions;

(c) the procedure and practice where complaints are referred to the Registrar of the Ecclesiastical Court under section 11 of this Measure;

(d) the time within which any act required or permitted to be performed is to be performed;

(e) matters relating to the appointment of authorised complainants in connection with proceedings or contemplated proceedings;

(f) the forms of complaint instituting proceedings, and of any answers to be made thereto;

- (g) all other forms and notices required in connection with this Measure;
- (h) the mode of effecting service of complaints and other documents, including provision for substituted service;
- (i) the fixing of the time and place in the deanery of any hearing, and for notifying the parties thereof;
- (j) matters relating to costs, fees and expenses in respect of any proceedings;
- (k) any matter which may be prescribed by virtue of this Measure.

(3) Rules made under subsection (1) shall be laid before, and shall not come into force until approved by, the Deanery Synod.

(4) It is the duty of every person exercising functions, or otherwise involved in proceedings, under this Measure to comply with all applicable Rules made under this section and approved by the Deanery Synod.”;

(cc) omit section 46;

(dd) in section 47, omit subsection (1), the proviso to subsection (2), and subsection (3);

(ee) omit section 48.

Application of the Church of England (Legal Aid) Measure 1994.

2. In the application to the Island and Bailiwick of Guernsey and its dependencies of the Church of England (Legal Aid) Measure 1994:

(a) in section 2(1), for “in the province of Canterbury or the province of York” substitute “pursuant to any provision of the Clergy Discipline Measure 2003 as applied to the Island and Bailiwick of Guernsey and its dependencies in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957”;

(b) immediately after section 3(3) insert:

“(4) In this section “solicitor” and “counsel” both include an Advocate of the Royal Court of Guernsey.”;

(c) immediately after section 4(6) insert:

“(7) In this section, and, unless the context otherwise requires, in any rules made under this section, references to a “solicitor” or “counsel” shall in both cases be taken to include an Advocate of the Royal Court of Guernsey.”;

(d) omit sections 5, 6, 7 and 8(2);

(e) for Schedule 1 substitute the following Schedule:

“SCHEDULE

Sections 2(1) and 4(2)

PROCEEDINGS FOR WHICH LEGAL AID MAY BE GIVEN

Description of proceedings	Description of applicants
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<p>1. Proceedings in respect of misconduct in any disciplinary tribunal or before the bishop or a Commission, under the Clergy Discipline Measure 2003 as applied to the Island and Bailiwick of Guernsey and its dependencies.</p>	<p>Any accused person</p>
<p>2. Proceedings under Schedule 4 to the Pastoral Measure 1983 as applied by section 41 of the Clergy Discipline Measure 2003, as that Measure is applied to the Island and Bailiwick of Guernsey and its dependencies</p>	<p>Any person having a right to compensation conferred by section 41 of the Clergy Discipline Measure 2003 as applied to the Island and Bailiwick of Guernsey and its dependencies.</p>

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General interpretation.

3. For the purposes of this Scheme, and of the Measures applied to the Island and Bailiwick of Guernsey and its dependencies by this Scheme, any reference to any other enactment is, unless otherwise expressly stated, a reference to that enactment as it has effect in the Island and Bailiwick of Guernsey and its dependencies.