

CLERGY DISCIPLINE (AMENDMENT) RULES 2016

EXPLANATORY MEMORANDUM

Introduction

1. The Clergy Discipline Measure 2003 ('the CDM') provides a structure for dealing with complaints of misconduct against members of clergy (except in relation to matters involving doctrine, ritual or ceremonial).
2. Section 45 of the CDM provides that rules may be made under section 26(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 for carrying into effect the provisions of the CDM. Rules were therefore accordingly made by the Rule Committee in 2005 (Clergy Discipline Rules and Clergy Discipline Appeal Rules), and those rules were then revised in 2013 principally to take account of amendments to the CDM made by the Clergy Discipline (Amendment) Measure 2013.
3. The Safeguarding and Clergy Discipline Measure 2016 ('the 2016 Measure') makes further amendments to the CDM. The Clergy Discipline Rules therefore now need to be revised again to take account of those amendments, and to that end the Rule Committee has prepared the Clergy Discipline (Amendment) Rules 2016. The Rule Committee has also taken this opportunity to revise the existing rules in various other minor respects.
4. A copy of the Clergy Discipline Rules as revised by the proposed Clergy Discipline (Amendment) Rules 2016 (GS Misc 1141) can be downloaded from <http://www.churchofengland.org/about-us/structure/general-synod.aspx>. Hard copies of GS Misc 1141 can be requested in advance from Mr Andrew Brown, Head of Synod Support (andrewj.brown@churchofengland.org).

Explanation of the Clergy Discipline (Amendment) Rules 2016

5. Section 7 of the 2016 Measure enables complaints about sexual misconduct towards an adult to be made outside the normal one year limitation period if the President of Tribunals considers that the adult in question was a vulnerable adult at the time of the misconduct. **Rule 2** introduces a new rule, rule 14A, to make procedural provision for such complaints.
6. Under the new rule 14A(1), where a complaint of sexual misconduct towards an adult is made outside the normal limitation period and permission has not already been given by the President for the complaint to be made out of time, the bishop is to refer the complaint to the President if it appears to the bishop that the adult in question may have been vulnerable. When the bishop is considering whether to refer the complaint to the President the bishop will have the benefit of the registrar's preliminary scrutiny report.

7. New rules 14A(3) and 14A(5) provide that the complainant and respondent can make representations as to whether the adult in question was vulnerable at the time of the conduct complained about, and in case the President determines that the adult was not vulnerable, they may also make representations as to whether there was a good reason why the complaint was not made within the limitation period of one year.
8. New rule 14A(6) provides that where the President determines that the adult was vulnerable the complaint can proceed under the CDM. New rule 14A(7) provides that if the President decides that the adult in question was not vulnerable the President may nonetheless give permission for the complaint to proceed if satisfied there was a good reason why it was not made in time.
9. Section 10 of the 2016 Measure allows the President to remit a complaint to the bishop to reconsider the bishop's earlier decision to dismiss the complaint under section 11(3) of the CDM, or to take no further action under section 12(1)(a) of the CDM, as the case may be. Consequential amendments are therefore required to existing rules 16(4) and 22 to reflect these new provisions. **Rule 3** amends existing rule 16 and **rule 4** amends existing rule 22.
10. **Rule 5** will amend existing rule 17 to enable the bishop to extend time for the respondent to submit an Answer to a complaint. Where the bishop does extend time the bishop will consequently also need to consider whether to extend time under rule 18 for determining which course to pursue to resolve the complaint.
11. **Rule 6** corrects an omission in the title to existing rule 61.
12. Section 1 of the 2016 Measure inserts a new power at section 36(1)(e) of the CDM to enable the bishop to suspend a priest or deacon when the police or local authority provide information to the bishop and the bishop is satisfied that the cleric presents a significant risk of harm. **Rule 7** adds a new rule, rule 61C, to make procedural provision for such suspensions and to provide a new form, **form 16a**, as the appropriate notice of suspension.
13. Section 8 of the 2016 Measure provides a new power at section 36A of the CDM which will enable the bishop to suspend a priest or deacon when an application to the President of Tribunals is made by a complainant for permission to make a complaint out of time. A new rule, rule 61D, is added by **rule 7** to provide for such suspensions, and to provide a new form, **form 17a**, as the appropriate notice of suspension.
14. **Rule 8(4)** makes express provision as to the contents of notices of suspension to be served under the new rules 61C and 61D. Rule 8(4) follows the format of notices served under existing powers of suspension. **Rule 8(2)** amends existing rule 62 (now to become rule 62(1)) so that the wording is consistent with the wording used in notices of suspension in existing forms 12a to 15b.
15. **Rule 9** amends existing rule 63 so that, when informing third parties about a suspension, the bishop is to give written notification, instead of giving them actual copies of the notice of suspension. The reason for the change is that copies of notices of suspension could disclose details that are confidential, especially in safeguarding cases; relevant persons generally need to know that there has been a suspension – they do not need to know details that are confidential.

16. **Rules 10, 11 and 12** make consequential amendments to existing rules 64, 65 and 66, following on from rules 7 to 9 above. **Rule 12** also amends existing rule 66(3) by providing that the President shall *normally* confirm or revoke a suspension within 28 days; this is so that it is more consistent with the wording of section 36(6) of the CDM.
17. **Rule 13** enables the Designated Officer to have access to the Archbishops' List. This is necessary in cases referred to a disciplinary tribunal for hearing so that submissions to the tribunal on penalty are not unwittingly made in ignorance of other relevant matters.
18. **Rules 14 to 17** make provision with regard to the suspension of bishops and archbishops.
19. **Rule 14** makes consequential amendments to existing rules 85, 86, 86A and 86B, arising from the amendment in rule 8(2).
20. **Rule 15** makes provision for the suspension of bishops and archbishops under the new powers in section 37(1)e and section 37(A) of the CDM. It provides two new notices of suspension – **form 16b** for use under section 37(1)(e) and **form 17b** for use under section 37(A). The equivalent rule in respect of priests and deacons is rule 7.
21. **Rules 16 and 17** amend existing rules 87 (suspension of a bishop) and 88 (suspension of an archbishop) so that, when informing third parties about a suspension, the relevant archbishop is to give written notification, instead of sending actual copies of the notice of suspension. Rules 87 and 88 are further amended along the lines of existing rule 63, thereby enabling the relevant archbishop to notify certain other persons of a suspension as the archbishop considers appropriate.
22. **Rule 18** makes minor changes to existing forms 12a to 15b, including adding some explanatory notes.
23. **Rule 19** adds the new forms 16a, 16b, 17a and 17b to the Schedule to the existing rules.
24. **Rule 20** deals with citation and commencement.

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