

**GENERAL SYNOD****SAFEGUARDING (CLERGY RISK ASSESSMENT) REGULATIONS 2016****Explanatory Memorandum****Introduction**

1. GS 1941 set out proposals for legislative change from the Archbishops' Council and the House of Bishops intended to enable the Church of England to deal more effectively with safeguarding issues. At the General Synod's February 2014 group of sessions a motion calling for legislation to implement those proposals was carried.
2. Amending Canon No. 34, which was enacted by the General Synod at the February 2016 group of sessions, is part of that legislative package. It introduces a new canon, C 30 ('Of Safeguarding').
3. Canon C 30.2 is expected to come into force on 1<sup>st</sup> March 2017. Canon C 30.2 enables a bishop to direct a priest or deacon with authority to officiate in a diocese to undergo a risk assessment. It will also enable an archbishop to direct a bishop holding office in the archbishop's province, or the other archbishop, to undergo a risk assessment. The bishop or archbishop, as the case may be, must be satisfied that the direction is justified in all the circumstances.
4. A risk assessment is an assessment of whether there is a significant risk that the cleric concerned may:
  - (a) harm a child or vulnerable adult,
  - (b) cause a child or vulnerable adult to be harmed,
  - (c) put a child or vulnerable adult at risk of harm,
  - (d) attempt to harm a child or vulnerable adult, or
  - (e) incite another person to harm a child or vulnerable adult.
5. A failure to comply with a direction under Canon C 30.2 without reasonable excuse will be regarded for the purposes of the Clergy Discipline Measure 2003 as a failure to do an act required by the laws ecclesiastical. Such a failure could therefore lead to disciplinary proceedings under the Measure.
6. Canon C 30.3(1) came into force on 16<sup>th</sup> May 2016. Under that provision the House of Bishops must make provision by Regulations about the carrying out of risk assessments. The Regulations must in particular make provision as to:
  - (a) the persons who may carry out a risk assessment;
  - (b) the procedure for carrying out a risk assessment;
  - (c) the procedure for challenging the outcome of a risk assessment.
7. Canon C 30.3(3) provides that the Regulations made by the House must be laid before the General Synod and cannot come into operation until they have been approved by Synod.
8. The Safeguarding (Clergy Risk Assessment) Regulations 2016 have been made by the House pursuant to Canon C 30 and are therefore now laid before the Synod for approval.

## **The Regulations**

### **Paragraph 1 – citation, commencement and interpretation**

9. Paragraph 1 provides that the Regulations will come into force on 1<sup>st</sup> March 2017.
10. Paragraph 1 also deals with citation and interpretation. In particular it provides that where an archbishop gives a direction under the Regulations a reference in the Regulations to the bishop takes effect as if it means the archbishop, a reference to the diocesan registrar means the provincial registrar, and a reference to the diocesan safeguarding advisor means the Archbishops' Council (which in practice will mean the National Safeguarding Team).

### **Paragraph 2 – requirement to have regard to House of Bishops' guidance**

11. Paragraph 2 provides that any person carrying out a function under the Regulations (which will include the relevant bishop, in particular) will have to have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults.

### **Paragraph 3 – appointment of person to carry out assessment**

12. Where a bishop gives a direction for a risk assessment, he or she must appoint the person to carry it out, and the person appointed will be chosen from a list maintained for this purpose by the Archbishops' Council. In practice this means a list maintained by the National Safeguarding Team.
13. Before making an appointment the bishop must be satisfied that the person to be appointed is suitable to carry out the risk assessment. In making an appointment the bishop must have due regard to the advice of the diocesan safeguarding advisor.
14. Under paragraph 3(4) an assessor's contract of appointment must set out the steps the bishop could take if the appointed person were to fail to comply with the Regulations; in particular the contract will be able to provide that a failure to comply with the Regulations would be a breach of contract.

### **Paragraph 4 – procedure for carrying out assessment**

15. Under paragraph 4 the diocesan safeguarding advisor must prepare the terms of reference of an assessment and submit them to the bishop for approval. Once the terms of reference are approved the bishop must ensure that the diocesan safeguarding advisor gives the assessor a written statement setting out the terms of reference, and any other information the bishop considers relevant.
16. The bishop must also ensure that the diocesan safeguarding advisor gives the cleric who is to be assessed a written statement setting out the terms of reference, the reasons for requiring the assessment, the name of the assessor, and how the assessment will be carried out. The cleric must also be informed that a copy of the risk assessment when completed might be given to the police, local authority or any other person or body concerned with the safeguarding of children or vulnerable adults.

17. Paragraph 4(4) provides that a failure by the cleric being assessed to comply with a reasonable requirement of the assessor will be regarded as a failure to comply with the bishop's direction under Canon C 30.2 (and therefore could potentially lead to disciplinary proceedings under the Clergy Discipline Measure 2003).

#### **Paragraph 5 – written assessment: content**

18. Where an assessor, carries out a risk assessment and is satisfied that there is a safeguarding risk, the assessor's written assessment must set out the nature and likely extent of the risk and the assessor's opinion on how to address or manage the risk.
19. If the assessor considers any matter the facts of which are in dispute, the written assessment must set out the nature and extent of the dispute, but the assessor will not be able to make a finding on any fact which is in dispute.

#### **Paragraph 6 – draft written assessment: procedure**

20. Paragraph 6 provides that where a risk assessment has been completed the assessor must give a draft written assessment to the bishop.
21. The bishop must give the draft written assessment to the cleric who has been assessed, save that the draft assessment may be redacted if it would otherwise disclose information about another person that should not be disclosed without that person's consent, and such consent has not been given. If the written assessment is redacted the bishop must give a written explanation of the reasons for the redaction.
22. The cleric to whom the assessment relates will be able to put to the assessor written questions and make written submissions on the draft written assessment within 14 days of receiving it. The questions will have to be answered by the assessor within 14 days, following which the cleric being assessed will be able to make written submissions to the assessor on the answers and on the draft assessment in light of those answers.
23. **Paragraph 7 – final written assessment: procedure** Paragraph 7 makes provision with respect to the final written assessment, after any amendments to the draft may have been made by the assessor in response to submissions made by the cleric being assessed. The assessor will give the final written assessment to the bishop. As with the draft written assessment, the bishop will be able to redact the final assessment, so that information relating to another person is not included in the assessment without that person's consent. Where the final written assessment is redacted the bishop will be required to explain in writing the reasons for the redaction.
24. The bishop will be required to give a copy of the final written assessment to the diocesan safeguarding advisor and to the chair of the diocesan safeguarding panel. The bishop will also be required to give a copy to the police, local authority or any other person concerned with the safeguarding of children and vulnerable adults if satisfied that it is necessary or appropriate to do so.

#### **Paragraph 8 – bishop's responsibilities following assessment**

25. When the bishop receives the final written assessment the bishop must invite the cleric who has been assessed to attend a meeting to discuss the recommendations set out in the

assessment and any action the bishop may be proposing to take in response to the assessment.

26. When the meeting has taken place (or where no meeting takes place and the bishop is satisfied that the cleric who has been assessed will not attend a meeting), the bishop must give written notification of any proposed action and the reasons for it. The cleric will then have 14 days to make written submissions to the bishop about the bishop's proposals.
27. The bishop must give a copy of the cleric's submissions to the diocesan safeguarding advisor and to the chair of the diocesan safeguarding panel.
28. Having reviewed matters in light of the cleric's submissions, the bishop must decide whether to take any action, and if so what action, and must then give the cleric written notification of his or her decision and a written explanation of the reasons for the decision. In deciding whether to take action or what action to take, the bishop will be required to have due regard to advice from the diocesan registrar, the diocesan safeguarding advisor and the chair of the diocesan safeguarding panel.

**Paragraph 9 – power of bishop to extend time limits**

29. The bishop will be able to extend any time period provided for by the Regulations, and will be required to notify in writing any person affected by an extension of time.

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**January 2017**