GENERAL SYNOD

DRAFT CLERGY DISCIPLINE (AMENDMENT) MEASURE

REVISION COMMITTEE REPORT

Chair: The Venerable Richard Atkinson (Leicester)

Ex officio members (Steering Committee):
The Rt Reverend Christopher Hill, Bishop of Guildford (Chair)
The Venerable Annette Cooper (Chelmsford)
Mrs Jennifer Dunlop (Chester)
Miss Vasantha Gnanadoss (Southwark)
The Reverend Prebendary Sam Philpott (Exeter)

Appointed members:
The Reverend Canon David Felix (Chester)
The Venerable Paul Ferguson (York)
Ms Alison Fisher (Wakefield)
Mr Jamie Harrison (Durham)
The Reverend Maureen Hobbs (Lichfield)

Consultant: Mr Niall Blackie (Diocesan Registrar for Lichfield)

Staff: Mr Stephen Slack (Chief Legal Adviser)
Sir Anthony Hammond KCB QC (Standing Counsel)
Mr Adrian Iles (The Designated Officer)
Miss Sarah Clemenson (Secretary)

1. The draft Clergy Discipline (Amendment) Measure ("the draft Measure") received First Consideration at the February 2011 group of sessions of the General Synod. The period for the submission of proposals for amendment under Standing Order 53(a) expired on Monday 14 March 2011.

2. Submissions were received from seven members of the General Synod, namely the Reverend Paul Benfield, the Venerable Paul Ferguson, Ms Jacqueline Humphreys, the Venerable Clive Mansell, Mr Clive Scowen, Mr Peter Smith, and Mr Adrian Vincent. The Committee met on one occasion, on the 3 October 2011. Three members exercised their right under Standing Order 53(b) to attend the meeting and to speak to their proposals (the Reverend Paul Benfield, Mr Clive Scowen and Mr Adrian Vincent). There were also a number of proposals for amendment made by the Steering Committee.

3. A list summarising proposals for amendment received, together with the Committee's decision in respect of each, is set out in Appendix I. The amendments which the Committee made to the draft Measure are reflected in GS 1814A, now before Synod, and are highlighted in bold. Unless otherwise stated in

this report, all decisions of the Committee were unanimous. Appendix II contains a destination table showing how the provisions in the draft Measure at First Consideration (GS 1814) relate to the draft Measure now before Synod (GS 1814A)

CONSIDERATION OF THE MEASURE CLAUSE BY CLAUSE:

Clause 1: Misconduct

Clause 1(1)

4. No submissions were received in respect of clause 1(1), and the Committee made no amendments.

Clause 1(2) - monitoring under the Safeguarding Vulnerable Groups Act

5. Clause 1(2) had been inserted into the draft Measure in response to provisions in the Safeguarding Vulnerable Groups Act 2006 ('the SVGA'), which introduced 'monitoring' for those intending to work in a 'regulated activity' with children and vulnerable adults. The SVGA did not apply to clergy so, in keeping with the Church's policies on safeguarding, clause 1(2) was designed to require clergy holding preferment to apply to the Independent Safeguarding Authority to be monitored. However, the Protection of Freedoms Bill, currently before Parliament, proposes to abolish the monitoring scheme. In the light of this the Steering Committee proposed that clause 1(2), together with the definition of 'monitoring' in the new section 8(6) to be inserted into the Clergy Discipline Measure 2003 ('the CDM') by clause 1(4) be withdrawn from the draft Measure. The Committee agreed.

Clause 1(3)

6. No submissions were received in respect of clause 1(3), and the Committee made no amendments.

Clause 1(4) - bodies that are incompatible with the Church's teaching on race equality

7. The Venerable Clive Mansell, Archdeacon of Tonbridge, proposed that clause 1(4) should be removed from the draft Measure. He questioned the need for it, on the basis that clergy membership of undesirable organisations was not a practical problem for the Church, and suggested that if it were retained the House of Bishops could come under considerable pressure from campaigning groups seeking to have certain organisations proscribed. He also feared that publicity would be generated for, and welcomed by, the groups and organisations that were proscribed, and argued that that was not a constructive means of combating racist behaviour.

8. Mr Adrian Vincent also questioned whether clause 1(4) was needed. He submitted that in February 2009 Synod had sent a strong signal that racism would not be tolerated in the Church, and that it was inconsistent with Christian discipleship. He pointed out that if criminal proceedings were successfully brought against a cleric under the Racial and Religious Hatred Act 2006,

disciplinary procedures could be triggered under the existing provisions of the CDM.

9. The Steering Committee opposed the proposal that clause 1(4) be removed from the draft Measure. The General Synod had made a policy decision in February 2009 when it approved the private member's motion requiring provision of this kind to be made, and the Steering Committee believed it should seek to implement that policy. The Committee agreed with the Steering Committee by 10 votes to 0 with 1 abstention and rejected the Venerable Clive Mansell's proposed amendment.

10. The Reverend Paul Benfield had submitted to the Committee that the provision enabling the House of Bishops to proscribe particular organisations be omitted, and that instead the House should be required to issue guidelines on racial equality to help clergy know what they could or could not do – this would enable a disciplinary tribunal to decide a case on its own particular facts in the light of those guidelines. The Committee was advised that such an amendment would not be compatible with article 10 (freedom of expression) and article 11 (freedom of assembly and association) of the European Convention on Human Rights ('the ECHR'), which has been incorporated into English Law by the Human Rights Act 1998. Under the ECHR interference with rights of free speech and association is only permitted where prescribed by law. Mr Benfield's proposed amendment would remove the element of certainty as to what a cleric could and could not do, and would substitute merely guidelines. A cleric might not therefore know if it would be misconduct to promote, support or belong to a particular organisation until a tribunal had made a ruling as to whether or not it complied with the guidelines – that would involve an unlawful interference with the rights protected under articles 10 and 11. In light of this advice to the Committee from the Legal Office, Mr Benfield withdrew his proposed amendment on this point.

11. Mr Vincent in his written submissions had made three specific proposals to amend clause 1(4) to remove the words "to be a member of or"; to add "any racist policies of" after the words "solicit support for"; and to delete the requirement that the House of Bishops should publish any declarations made under clause 1(4). However, Mr Vincent withdrew all three proposals before the Committee, the last two in the light of advice to the Committee from the Legal Office that they were not compatible with articles 10 and 11 ECHR since they would lead to uncertainty as to what a cleric could and could not do.

12. Mr Scowen agreed that it was appropriate that the House of Bishops should initially decide under clause 1(4) which groups or organisations were incompatible with the Church's teaching on racial equality, but he submitted that any such decision should require a two-thirds majority in the House, because it would be creating an exception to the important principle enshrined in section 8(3) of the CDM that no proceedings for unbecoming conduct could be taken in respect of lawful political opinions or activities. He proposed a further safeguard that any decision by the House of Bishops to proscribe a body should be ratified by the other two Houses of the General Synod, but that ratification could be deemed to have been given unless within 28 days of the declaration by the House of Bishops 10 members of either of the other two Houses of the General Synod called for a debate. Mr Scowen withdrew a submission that all members of the

Houses of Clergy and Laity and all licensed clergy should immediately be notified by the House of Bishops of a declaration. Instead he proposed that all clergy in active ministry should be notified by their respective dioceses when the House of Bishops made a declaration under clause 1(4), so that they could consider whether to ask their proctors to call for a debate. Mr Scowen suggested that once a debate was called for by a particular House, that House would meet on its own to debate and vote on the proposed declaration. If either the House of Clergy or the House of Laity voted against the declaration of incompatibility then it would not take effect.

13. Mr Benfield supported the proposal that a declaration of the House of Bishops under clause 1(4) should be subject to an approval process involving the General Synod. He too submitted that approval could be deemed unless Synod members wished to debate the proposed declaration. Mr Benfield further submitted that clause 1(4) was not clear as to how clergy would discover that the House of Bishops had made a declaration, and that they should be given a period of grace following a declaration within which to sever their links with any proscribed organisation, otherwise they could be unwittingly guilty of misconduct.

14. The Steering Committee advised the Committee that it was sympathetic to Mr Scowen's proposal. It agreed with him that the House of Bishops should take the initiative in making declarations about compatibility with the Church's teaching on racial equality, and it was mindful that any such declarations could impact on both clergy and laity in the Church. The Steering Committee bore in mind that clause 1(4) would affect rights granted under articles 10 and 11 ECHR, and that in due course the Ecclesiastical Committee would scrutinise the draft Measure and prepare a report for Parliament with its views as to whether it was expedient, especially in relation to the constitutional rights of Her Majesty's subjects. The Steering Committee was therefore in favour of the General Synod having a role to play in approving any declarations of incompatibility under clause 1(4). Any approval process would then necessarily result in a period during which individual clergy could take action to distance themselves from any incompatible organisation.

15. The Committee agreed with the Steering Committee and, in accordance with the general submissions made by Mr Scowen and Mr Benfield, voted by 11 votes to 2 that a declaration by the House of Bishops under clause 1(4) should be subject to an approval process involving the General Synod, and that any approval process would apply not only when a declaration of incompatibility was made but also when any such declaration was revoked by the House.

16. The Committee accepted Mr Scowen's proposal that a declaration by the House of Bishops under clause 1(4) should require a two-thirds majority.

17. The Committee considered whether the Synodical approval required should be that of the whole Synod or that of the Houses of Clergy and Laity individually. A debate in the whole Synod would enable members of the House of Bishops to take part in the debate and explain the House's rationale for the declaration. The Committee therefore agreed that it would be more appropriate for the whole Synod to debate an approval motion, and that any contentious declarations would consequently be endorsed by the Synod as a whole. It therefore rejected Mr

Scowen's submission that approval should be given separately by the Houses of Clergy and Laity.

18. The Committee agreed that any declaration by the House of Bishops under clause 1(4) should not come into force until Synod had had the opportunity to approve the declaration, and accepted the submission from Mr Scowen and Mr Benfield that such approval could be deemed to be given unless a debate was called for by a given number of the members of Synod. The Committee agreed that the number of Synod members required to call for a debate should be 25, and that requests for a debate should be made in writing to the Clerk to the Synod in accordance with the requirements of the Synod's Standing Orders.

19. The Committee rejected Mr Scowen's submission that all clergy in active ministry should be notified of a declaration by the House of Bishops under clause 1(4). The Committee believed that such a declaration would receive considerable publicity, especially once the item appeared in the agenda for a group of sessions – Synod business was published on the Church of England website and this particular business would, no doubt, receive attention from the national press.

20. The Committee rejected by 10 votes to 1 Mr Benfield's proposal that clergy should be given a period of grace to sever their links with an organisation once it had been proscribed. There would be sufficient time during the declaration and approval process for clergy to consider their position and to withdraw from such organisations. Furthermore, once a declaration under clause 1(4) came into effect a member of the clergy who was involved with a proscribed organisation would not automatically be disciplined – a complaint would have to be made first. The Committee also rejected Mr Benfield's concerns about how the House of Bishops would publish a declaration. By virtue of the new section 8(5) in the CDM, to be inserted by Clause 1(4), the House would be under a statutory duty to take appropriate steps to publish a declaration and that was sufficient. If further detailed provision were required, which the Committee did not believe to be the case, it could be included in a future revision of the Clergy Discipline Rules made in accordance with section 45 of the CDM.

21. The Steering Committee proposed a drafting amendment to clause 1(4) by replacing the words "express, promote or solicit support for" with "promote, or express or solicit support for". The Committee agreed that that formulation would be clearer and accepted the proposal.

Clause 1(5)

22. No submissions were received in respect of clause 1(5), and the Committee made no amendments.

Clause 2: Penalty by consent

23. No submissions were received in respect of clause 2, and the Committee made no amendments.

Clause 3: Right of appeal

Clause 3(1) and (2)

24. No submissions were received in respect of clause 3(1) or (2), and the Committee made no amendments.

Clause 3(3) - obtaining leave to appeal

25. Mr Benfield proposed that clause 3(3) be withdrawn. He submitted that there should always be a right to appeal, and that a right of appeal was consistent with the recommendations of *"Under Authority"* (GS 1217)[1]. He argued that since the CDM came into force in January 2006 there had only been two appeals, so there was little evidence to suggest the right to appeal was being misused. He pointed out that capability procedures under the 'terms of service' legislation provided for an appeal against dismissal to an employment tribunal, and he contended that it would be unfair on clergy to remove the right of appeal in disciplinary proceedings. He drew an analogy with disciplinary proceedings against the medical profession, where there was an unfettered right of appeal. He acknowledged that article 6 of the European Convention on Human Rights (right to a fair trial) did not require a right of appeal, but he contended that the Church should strive for a higher standard than article 6.

26. The Steering Committee opposed Mr Benfield's proposal that clause 3(3) be deleted. Clause 3(3) did not remove the right of appeal, because every clergy respondent would still be entitled to apply for leave to appeal, and if either the Dean of the Arches and Auditor or the other judge hearing the application believed there was a real *prospect* of success (which was a relatively low threshold to satisfy) then the appeal would go ahead. If an appeal had no realistic prospect of success then the Steering Committee believed it would be inappropriate for it to be pursued to a final hearing. Furthermore, whilst an unmeritorious appeal remained unresolved any parish concerned could well be adversely affected by the consequent delay and uncertainty.

27. The Committee noted that in the consultation carried out by the Clergy Discipline Commission in 2008/09[2] there was widespread support for the proposal that leave to appeal should be required for all appeals. It considered that prolonging cases whilst unmeritorious appeals were pursued could be unfair on others affected by the complaint, and that it was important to ensure justice was provided for all, not just the respondent. The Committee noted that in secular court proceedings leave to appeal was usually required before an appeal could be pursued. The Committee rejected Mr Benfield's proposals to remove clause 3(3).

28. Mr Benfield further submitted that any application for leave to appeal should be determined on paper by each of the five judges of the appellate court (namely the Court of Arches or the Chancery Court of York, as the case may be) and that leave to appeal should be granted if a majority of the judges were in favour. Mr Benfield argued in the alternative that if two judges sitting together were to determine an application for leave to appeal, then the second judge sitting with the

[1] *"Under Authority"* was a report published in 1996 by a working party of the Synod that reviewed clergy discipline, and called for fresh legislation. This led to the enactment of the Clergy Discipline Measure.

[2] The relevant paper was circulated in June 2009 as GS 1747B.

Dean of Arches and Auditor should always be a clerk in Holy Orders, since the ministry and livelihood of a member of the clergy would be at stake.

29. The Steering Committee opposed each of these proposals from Mr Benfield. It considered that a member of the clergy wishing to appeal would be more likely to secure leave to appeal from one of two judges than from three out of five, and it considered that a five-judge court would not be able to function satisfactorily if each judge considered the application alone. The Steering Committee also believed that it was appropriate to hear the voice of the laity in an application by a respondent cleric for leave to appeal.

30. The Committee agreed with the Steering Committee and rejected Mr Benfield's proposed amendments with regard to applications for leave to appeal.

31. Mr Clive Scowen proposed that clause 3(3) should be amended to provide specifically as to what the decision of the court would be on an application for leave to appeal where the two judges disagreed. He submitted that a new sub-section was required in clause 3(3) to provide that (a) where one judge held that leave should be given without limit but the other judge considered that only permission limited to certain issues was appropriate, the appeal should proceed without limitation; (b) where one judge held that leave should be given limited to certain issues but the other judge refused to grant leave to appeal, the appeal would proceed on the issues as limited by the first judge; and (c) where both judges wished to limit the issues in the appeal but did not agree as to which issues they should be, the appeal would proceed in respect of each issue identified by either judge.

32. Legal advice was given to the Committee that the amendment was otiose, and that clause 3(3) as presently drafted already achieved what Mr Scowen was seeking. Under the new s.20(1C) to be inserted by clause 3(3) the court *could* direct that the issues to be heard on the appeal be limited in such way as the court may specify. Since the approval of only one judge was required for leave to appeal any decision made by the court (whether giving unlimited or limited leave to appeal) would necessarily be that which was most favourable to the appellant. The Committee was advised that the draft legislation should be kept as uncomplicated as possible.

33. The Committee accepted the legal advice and rejected Mr Scowen's proposed amendment.

34. Ms Jacqueline Humphreys submitted that the term "leave" in clause 3(3) was archaic and should be replaced with the word "permission", which she argued was more easily understood. The Steering Committee opposed Ms Humphreys' submission, and Standing Counsel advised the Committee that if her submission were accepted consequential amendments would be required to section 7(2)(b) and section 8 of the Ecclesiastical Jurisdiction Measure 1963. The Committee rejected Ms Humphreys' proposed amendment.

Clause 3(4) - appointment of judges to hear an appeal and transitional matters

35. Mr Benfield proposed that the number of judges in the Court of Arches or Chancery Court of York (as the case may be) to hear a substantive appeal should be reduced from five to three, unless the appeal involved new evidence. He submitted that a five-judge court was cumbersome. The Steering Committee opposed this proposal.

36. The Committee noted that the Clergy Discipline Commission had concluded following its consultation (GS 1747B) that it was not appropriate or desirable for a three-judge court to be able to overturn a decision of a tribunal consisting of five members. It would be particularly undesirable if the court were split two judges to one but the tribunal had been unanimous the other way. The Committee rejected Mr Benfield's proposed amendment.

37. Mr Clive Scowen proposed that the transitional provision to be inserted by clause 3(4) relating to appeals brought before clause 3(3) came into force should be amended to apply to complaints made before clause 3(3) came into force. He submitted that it would otherwise be unfair because the new provisions would remove an unfettered procedural right to appeal for any cleric in respect of whom a complaint had already been made. The Steering Committee supported this proposal.

38. The Committee accepted Mr Scowen's proposed amendment.

39. Mr Scowen proposed two drafting amendments in respect of clause 3(4). He submitted that clause 3(4) was inserting provisions into section 20 CDM, whereas sub-clauses (6) and (7) had no place in section 20 and should be renumbered as clauses 3(5) and 3(6) respectively.

40. The Committee accepted these proposed amendments from Mr Scowen.

Amendments to clause 3 proposed by the Steering Committee

41. The Steering Committee had noted observations made by the Dean of the Arches and Auditor, Charles George QC, ('the Dean') at First Consideration of the draft Measure in relation to clause 3. The Dean had spoken in favour of clause 3 but wished to see it amended in three respects. First, he suggested that leave to appeal should be capable of being granted not just by the appellate court but also by the bishop's disciplinary tribunal at first instance. This would then accord with the usual practice in secular civil courts. Secondly, the Dean had suggested that the new section 20(5) to be inserted by clause 3(4), enabling a cleric to make representations as to the suitability of a person to be appointed to the appellate court to hear an appeal, should be extended to cover the second judge sitting with the Dean to consider an application for leave to appeal. Thirdly, the Dean recommended that the second person appointed to sit with the Dean should not be a permanent appointment but, like the judges of the full court, be appointed for the purposes of a particular application.

42. The Steering Committee considered that there was logic and consistency in all three points raised by the Dean and proposed amendments to the draft Measure to reflect them.

43. The Committee agreed with the Steering Committee and accepted each of these three proposed amendments to clause 3.

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

Clause 4(1)

44. No submissions were received in respect of clause 4(1), and the Committee made no amendments.

Clause 4(2)

45. Mr Peter Smith made no specific proposal for amendment to clause 4(2) but he drew the Committee's attention to his concerns in relation to paragraph (c) that a member of the clergy who had not been convicted of a criminal offence could nonetheless be put on a barred list under the provisions of the SVGA.

46. The Committee was advised that before any decision was taken by the Independent Safeguarding Authority ('ISA') to place a person on one of the two barred lists, that person would have the right to make representations, and if included in a barred list, would be entitled to appeal to a statutory tribunal on the grounds that ISA had made a mistake on any point of law or any finding of fact which it had relied upon. The Committee was also advised that under the new s.30(1)(c) to be inserted by clause 4(2) the bishop would have a discretion whether to exercise any disciplinary powers after consulting the President of Tribunals and giving the priest an opportunity to make representations. The Committee therefore decided to make no amendments to the new s.30(1)(c) in response to Mr Smith's concerns.

47. The Committee did however agree to an amendment which was proposed by the Steering Committee, to introduce an obligation on clergy to notify their bishop if they were barred by ISA under the SVGA from undertaking 'regulated activity' with children or vulnerable adults. A statutory instrument made under schedule 7 of the SVGA had been due to come into force in July 2010, which would have entitled bishops in certain circumstances to be notified by ISA when clergy were put on the barred lists. Following a change of government, that statutory instrument had been revoked. The Committee therefore agreed that a new provision be inserted to impose on clergy a duty to report to the bishop if put on a barred list, similar in form to the existing duty on clergy under sections 33 and 34 of the CDM to report when arrested or convicted of a criminal offence, or if their marriage was dissolved: failure to comply with that obligation would constitute misconduct. The new provision is contained in paragraph 7 of the Schedule to the draft Measure.

Clause 4(3) to 4(7)

48. No proposals for amendment were received in respect of clause 4(3) to (7), and the Committee made no amendments.

Clause 4(8)

49. Mr Clive Scowen proposed that the reference to 'subsection (2)(a)(ii) above' was incorrect because there was no such subsection in clause 4: the reference should have been to subsection (2)(a) so far as it relates to the new s.30(1)(a)(ii) of the CDM. The Committee accepted his submission and agreed that clause 4(8) should be amended accordingly.

Clause 4 - matrimonial orders and section 30(1)(b) of the CDM

50. Ms Jacqueline Humphreys, Mr Paul Benfield and the Venerable Paul Ferguson each made proposals in connection with clause 4 to amend section 30 of the CDM in relation to disciplinary penalties following the breakdown of a marriage.

51. Ms Humphreys proposed that the bishop's power to impose a penalty under section 30(1)(b) of the CDM should be abolished. She submitted that in practice allegations in a petition for divorce were often not contested so that a swift divorce with minimum expense and acrimony could be obtained – especially where the petition was presented on the grounds of unreasonable behaviour. Ms Humphreys contended that it was unfair on clergy if they were then subsequently liable to a penalty from their bishop based on the unreasonable behaviour relied upon in the divorce proceedings. She also argued that it was unfair that clergy were able to avoid the consequences of their own matrimonial misconduct under section 30(1)(b) by presenting their own petition for divorce based on their spouse's unreasonable behaviour. She was also concerned by the potential for wide discrepancies in the imposition of penalties under section 30(1)(b).

52. Ms Humphreys proposed in the alternative that clause 4 be amended to delete from section 30(1)(b) the words "behaviour in such a way the petitioner cannot reasonably be expected to live with the respondent". She argued that, were this amendment to be made, the bishop would retain his power to impose a penalty where the cleric had been respondent to a divorce petition based on adultery or desertion.

53. Ms Humphreys proposed, as a further alternative, that if section 30(1)(b) were retained, there should be an obligation on a bishop not just to consult the President on penalty but to follow the view of the President of Tribunals unless there was a good reason not to do so. Ms Humphreys argued that this would lead to greater consistency among bishops. She also proposed that individual clergy should be entitled to see the information that was referred to the President by the bishop and that they should be permitted to add material to it if they wished to do so.

54. Mr Benfield's submission on clause 4 was similar to Ms Humphrey's primary point that section 30(1)(b) of the CDM should be repealed. He reminded the Committee that findings of adultery, unreasonable behaviour and desertion were frequently made without detailed consideration of the evidence. He contended that it was unsatisfactory that this could lead to removal from office and prohibition, and he asked the Committee to consider how the problem could be dealt with equitably.

55. The Steering Committee disagreed with Ms Humphreys and Mr Benfield that section 30(1)(b) of the CDM should be repealed. It was satisfied that paragraph 171 of the Code of Practice gave sound advice and realistic guidance to a bishop

who was considering exercising his powers of discipline following a marital breakdown, especially following a divorce petition based on unreasonable behaviour.[3] The Committee agreed with the Steering Committee, and rejected both the proposal to remove section 30(1)(b) altogether and also the submission that it should be restricted to cases of adultery or desertion.

56. The Committee rejected the submission from Ms Humphreys that bishops should be required to follow the view of the President of Tribunals as to penalty when acting under section 30(1)(b). The Committee bore in mind the fundamental principle in section 1 of the CDM that it was the bishop who was responsible for administering discipline, and it was satisfied that consistency was achieved under the present procedure whereby the President was consulted by a bishop. Additionally, any decision by the bishop to impose a penalty under section 30(1)(b) could be reviewed by the archbishop on the application of the cleric concerned.

57. The Committee was sympathetic to the submission that when the bishop consulted the President about a proposed penalty he should disclose to the cleric concerned copies of the papers sent to the President. However, it accepted advice that it would be more appropriate for this to be considered in due course as a possible amendment to the Clergy Discipline Rules rather than deal with it by way of primary legislation.

58. The Venerable Paul Ferguson proposed that clause 4 should be amended to provide that under section 30(1)(b) of the CDM a penalty could be imposed by the bishop following the grant of a decree nisi, rather than having to wait until a decree absolute had been made. He further submitted that a cleric should be required to notify the bishop under section 34 of the CDM when a decree nisi was granted in respect of his or her marriage. This would be particularly appropriate in cases of scandal where a bishop needed to act quickly.

59. The Committee was advised that a marriage was not dissolved until decree absolute, and until it was dissolved there would remain a possibility, albeit a somewhat theoretical one, that there might be a reconciliation and the marriage saved – something that the Church would usually wish to encourage. It would be counterproductive and illogical for discipline to be administered to a cleric for matrimonial misconduct if the marriage survived. The Committee was further advised that if urgent disciplinary action was required in serious cases of matrimonial misconduct pending the grant of a decree absolute, a complaint could be made by an archdeacon against the cleric in the usual way under section 8 of the CDM, and this would in turn enable the bishop to use his powers of

[3] Paragraph 171 of the Code of Practice: *"Removal from office or prohibition will not automatically result from a decree absolute of divorce or decree of judicial separation involving adultery, unreasonable behaviour or desertion. Most decrees absolute and decrees of judicial separation are granted as a result of uncontested proceedings on paper so that the evidence in support of the petition is not questioned or tested, although it is accepted by the court. Furthermore, some respondents, recognising that their marriage has broken down irretrievably and could be dissolved against their will in any event after a period of 5 years separation, may choose not to contest allegations in a divorce petition, even if not accepted – this avoids legal expense and argument over sensitive and personal issues. The bishop should bear this in mind as a factor when considering what disciplinary action to take."*

suspension if it would help to take the sting out of any difficult or scandalous cases.

60. The Committee noted that when a decree nisi was granted in divorce proceedings the court was satisfied that a marriage had irretrievably broken down. Nonetheless, members of the Committee were reluctant to contemplate amending the draft Measure to introduce a mechanism that could prevent a reconciliation between parties where that might be a possibility. In the light of the Committee's deliberations the Venerable Paul Ferguson withdrew his proposed amendment.

Section 30(1)(b) CDM - civil partnerships

61. No submissions or proposals were made to the Committee with regard to the dissolution of civil partnerships, but the Committee considered a point raised by the Reverend Canon Simon Butler at First Consideration stage. He had asked in the course of the debate whether there should be parity under section 30(1)(b) of the CDM between marriages and civil partnerships, so that a bishop could discipline a cleric whose civil partnership was dissolved on the grounds of his or her unreasonable behaviour or desertion. The Committee noted that the House of Bishops had announced that it was going to review the Church's approach to same-sex relationships and would produce a consultation document in 2013. The Committee concluded that it would be premature to contemplate any changes to section 30(1)(b) until the House's review was complete. Furthermore, the Committee was advised that section 30(1)(b) was not contrary to the Equality Act 2010, and consequently there was no reason in law that required it to be amended.

Clause 5: Convictions for criminal offences and matrimonial orders, etc: bishops and archbishops

62. The Committee noted that clause 5 of the draft Measure applied to section 31 of the CDM similar provisions to those in clause 4 relating to section 30. The distinction between sections 30 and 31 is that section 30 deals with convictions and marital breakdowns in respect of priests and deacons whereas section 31 is concerned with bishops and archbishops. Under section 30 the diocesan bishop administers discipline, and under section 31 it is the archbishop, or the other archbishop as the case may be, who does so.

Clause 5(1)

63. No submissions were received in respect of clause 5(1), and the Committee made no amendments.

Clause 5(2)

64. The proposals made by Ms Humphreys and Mr Benfield with regard to section 30(1)(b) of the CDM applied equally to section 31(1)(b) of the CDM. Consequently, the Committee's conclusions in relation to those submissions set out in relation to clause 4(2) in paragraphs 55-57 above applied equally to section 31(1)(b). The Committee therefore rejected the proposals from Ms Humphreys and Mr Benfield for amendment to section 31(1)(b).

65. The proposal from the Steering Committee with regard to the new s.30(1)(c) to be inserted in the CDM by clause 4(2), applied equally to the new s.31(1)(c) to be inserted by clause 5(2). For the reasons set out in paragraph 47 above in relation to clause 4(2) the Committee agreed with the Steering Committee that a duty should be imposed on bishops and archbishops in connection with the new s.31(1)(c) to notify the archbishop (or the other archbishop as the case may be) if they were put on a barred list by ISA.

Clause 5(3) to 5(5)

66. No submissions were received in respect of clause 5(3) to (5), and the Committee made no amendments.

Clause 5(6)

67. Mr Clive Scowen proposed that the word "above" should be omitted after "section 30(1)(a)(ii)" because it referred to a section in the CDM, rather than to a provision in the draft Measure. The Committee accepted the proposed amendment.

68. The Steering Committee proposed a further drafting amendment – that in line 2 of clause 5(6) the word "offence" be replaced by the word "conviction". The Committee accepted that amendment.

Clause 6: Suspension of priest or deacon

Clause 6(1)

69. No submissions were received in respect of clause 6(1), and the Committee made no amendments.

Clause 6(2)

70. Mr Clive Scowen proposed that the new power of suspension should be widened to include any conviction where a sentence of imprisonment was passed, since the draft Measure did not enable a bishop to suspend where a short or suspended prison sentence was imposed on a member of the clergy following conviction for a summary offence. The Committee accepted the proposal and therefore agreed that "(ii)" should be deleted after the words "section 30(1)(a)" in the new s.36(1)(c) to be inserted by clause 6(2).

Clause 6(3)

71. No submissions were received in respect of clause 6(3), and the Committee made no amendments.

Clause 6(4)

72. The Steering Committee proposed that clause 6(4) be amended so that the bishop would have power to renew a suspension that was imposed following the priest's conviction, or the priest having been entered on a barred list under the SVGA. Although the original suspension could be for up to three months it was foreseeable that there could be cases where the bishop was not able to take action

under section 30(1) of the CDM within that time frame – for example where the respondent priest was ill so the process was delayed. The Committee noted the safeguard that the respondent priest would have the right to appeal to the President of Tribunals against the renewal of any suspension. It accepted the Steering Committee's proposed amendment and agreed that all the words after "earlier" should be replaced by ", save that a further notice of suspension under subsection 1(c) or (d) may be served pending conclusion of any step taken under section 30(2) or (4), and this subsection shall apply in relation to the further suspensions as it applied to the earlier suspension or suspensions". This amendment also covered suspensions of bishops and archbishops, because of the effect of clause 7(3) of the draft Measure.

Clause 6(5)

73. No submissions were received in respect of clause 6(5), and the Committee made no amendments.

Clause 7: Suspension of bishop or archbishop

74. The Committee noted that clause 7 applies to section 37 of the CDM similar provisions to those in clause 6 relating to section 36. The distinction between sections 36 and 37 is that section 36 deals with suspensions in respect of priests and deacons whereas section 37 is concerned with bishops and archbishops.

Clause 7(1)

75. No submissions were received in respect of clause 7(1), and the Committee made no amendments.

Clause 7(2)

76. Mr Clive Scowen suggested a proposed amendment to clause 7(2) that was similar to the amendment for the corresponding provision in clause 6(2) relating to priests and deacons (see paragraph 70 above). The Committee accepted the amendment.

Clause 7(3) and 7(4)

77. No submissions were received in respect of clause 7(3) or (4), and the Committee made no amendments.

Clause 8: Archbishops' list

78. No submissions were received in respect of clause 8, and the Committee made no amendments.

Clause 9: Amendments and repeals

Clause 9(1)

79. No submissions were received in respect of clause 9(1), and the Committee made no amendments.

Clause 9(2) to (8)

80. Mr Clive Scowen pointed out that clause 9(2) amended section 3 of the Ecclesiastical Jurisdiction Measure "as follows", but that not all the following amendments in clause 9 related to that section. The Committee agreed. It amended clause 9(2) by deleting the words "as follows" and inserting instead "in accordance with subsections (3) to (6) below".

81. The Steering Committee proposed that the phrases "shall be amended" and "shall be substituted" in clause 9(2), (5) and (6) should be changed to "is amended" and "is substituted" for consistency with clause 9(3) and (4). This method of drafting follows the current practice of Parliamentary Counsel. The Committee agreed and made those amendments.

Clause 10: Citation, commencement and extent

82. No submissions were received in respect of clause 10, and the Committee made no amendments.

The Schedule

Paragraph 1

83. Mr Clive Scowen had suggested that paragraph 1 was otiose, but in light of advice from Standing Counsel that the provision should remain, Mr Scowen withdrew his proposal to remove it.

Paragraph 2

84. No submissions were received in respect of paragraph 2, and the Committee made no amendments.

Paragraph 3

85. Mr Clive Scowen questioned the effect of paragraph 3. He submitted that the part of paragraph 3 that amended section 23(2)(a) of the CDM did not have the effect set out in paragraph 32 of the Explanatory Memorandum (GS 1814X). The Committee was advised that Mr Scowen's submission was based on the illustrative wording of the CDM in GS Misc 976 which did not accurately reflect the scope of the proposed amendment to section 23(2)(a), and which had misled Mr Scowen. Mr Scowen accordingly withdrew this submission.

86. Mr Scowen further submitted that the person in Holy Orders appointed as the non-episcopal member of the Vicar-General's court in proceedings against an archbishop, should be appointed from the other province. This would then accord with the proposed amendment in paragraph 3(b) in respect of proceedings against a bishop. The Committee agreed and amended paragraph 3 accordingly.

Paragraphs 4 to 9

87. No submissions were received in respect of paragraphs 4 to 9, and the Committee made no amendments.

Amendments proposed by the Steering Committee – delegation by the President & Deputy President of Tribunals

88. The Steering Committee proposed an amendment to the Schedule, which had been recommended by the Clergy Discipline Commission. The amendment would enable the President of Tribunals and the Deputy President to delegate their functions to a tribunal chair in an individual case where there could be a question of perceived bias – for example if a member of the Commission were involved in a complaint. The Committee accepted the proposal and directed accordingly that provision be added to the Schedule of the draft Measure (at new paragraphs 2 and 3 in the Schedule of the draft Measure currently before Synod).

On behalf of the Committee December 2011
The Venerable Richard Atkinson (Chair)

APPENDIX I SUMMARY OF PROPOSED AMENDMENTS AND THE COMMITTEE'S DECISIONS

– proposed in Committee by a member of the Committee

* – attended the Revision Committee meeting and spoke to their submission under Standing Order 53(b)

Clause in original draft Measure (GS 1814)	Name	Summary of proposal	Committee's decision
1(2)	Steering Committee #	Leave out.	Accepted.
1(4)	Steering Committee #	Leave out the definition of 'monitoring'.	Accepted.
1(4)	Ven Clive Mansell Mr Adrian Vincent *	Leave out.	Not accepted.
1(4)	Revd Paul Benfield *	Leave out clause 1(4) as drafted, and replace it with a requirement for the House of Bishops to produce guidelines on racial equality.	Withdrawn.
1(4)	Mr Adrian Vincent *	Delete the words "to be a member of or", and after "solicit support for" add "any racist policies of", and omit the requirement for the House of Bishops to publish a declaration.	Withdrawn.
1(4)	Mr Clive Scowen *	Insert a new provision in clause 1(4) which requires a declaration to be made by a two-thirds majority of the House of Bishops.	Accepted.
1(4)	Mr Clive Scowen *	Amend so that a declaration made by the House of Bishops: (i) requires Synodical approval, which can be deemed to be given; and, (ii) a motion for approval is to be debated by the House of Clergy and/or the House of Laity if 10 members of that House request a debate.	Accepted. Not accepted.
1(4)	Revd Paul Benfield *	Amend so that a declaration made by the House of Bishops requires approval by the Synod, and such approval could be deemed.	Accepted.
1(4)	Revision Committee #	Amend so that a motion for approval or revocation of a declaration is deemed approved by the Synod unless 25 members request a debate in accordance with Synod's Standing Orders.	Accepted.

1(4)	Revd Paul Benfield *	Amend so that a declaration comes into force after a 'grace period' following publication, during which clergy may resign from a prohibited organisation.	Not accepted.
1(4)	Mr Clive Scowen *	Amend so that all licensed clergy and all members of the Houses of Clergy and Laity are immediately notified when a declaration is made. *Alternatively:* Amend so that all clergy and all members of Synod are notified by their dioceses of a declaration before it is debated in Synod and takes effect.	Withdrawn. Not accepted.
1(4)	Steering Committee #	Amend to replace the words "express, promote or solicit support for" with "promote, or express or solicit support for".	Accepted.
3(3)	Revd Paul Benfield *	Leave out.	Not accepted.
3(3)	Ms Jacqueline Humphreys	Replace the term "leave" with "permission".	Not accepted.
3(3)	Revd Paul Benfield *	Amend so that an application for leave to appeal is considered by all 5 members of the appellate court. *Alternatively:* Amend so that the judge sitting with the Dean of the Arches and Auditor to consider an application for leave to appeal is always in Holy Orders.	Not accepted. Not accepted.
3(3)	Mr Clive Scowen *	Amend to make clear what would happen if the two judges are unable to agree.	Not accepted.
3(3)	Steering Committee #	In the new s20(1A), leave out the words "the court" and insert the words "the disciplinary tribunal or the Vicar-General's court or the appeal court".	Accepted.
3(3)	Steering Committee #	In the new s.20(1B), in the first line, insert the word "appeal" before the word "court" and after the words "president of tribunals" insert the words "for the purpose of those proceedings".	Accepted.
3(4)	Revd Paul Benfield *	Amend so that a three-member court can hear an appeal (except where new evidence was to be heard).	Not accepted.
3(4)	Steering Committee #	Extend to the application for leave to appeal the provision in clause 3(4) to enable a cleric to make representations to the President of Tribunals.	Accepted.
3(4)	Mr Clive Scowen *	Amend so that the transitional provision for appeals brought before clause 3(3) comes into force applies only to	Accepted.

		complaints made before clause 3(3) comes into force.	
3(4)	Mr Clive Scowen *	Move into a new clause 3(5) the provision relating to proceedings brought before clause 3(3) comes into force, and move into a new clause 3(6) the provision relating to previous judicial appointments.	Accepted.
4(2)(c)	Steering Committee #	Introduce a new provision (in the Schedule) requiring clergy to notify the bishop/archbishop if barred by ISA from undertaking 'regulated activity' under the SVGA.	Accepted
4(2)	Ms Jacqueline Humphreys Revd Paul Benfield *	Amend so as to repeal section 30(1)(b) CDM.	Not accepted.
4(2)	Ms Jacqueline Humphreys	Amend so that a penalty under s30(1)(b) CDM can only be imposed in cases of adultery and desertion.	Not accepted.
4(2)	Ms Jacqueline Humphreys	Amend so that a respondent has the right to see what information is sent to the President of Tribunals under section 30(1)(b) CDM.	Not accepted for inclusion in the draft Measure.
4(2)	Ms Jacqueline Humphreys	Amend to increase the influence of the President of Tribunals so that the bishop be required to follow the President's views unless there is good reason not to do so.	Not accepted.
4(2)	Ven Paul Ferguson *	Amend to impose a duty on a cleric to notify the bishop when a decree nisi is made, and to enable a bishop to impose a penalty following the grant of a decree nisi.	Withdrawn.
4(8)	Mr Clive Scowen *	Amend the reference to "subsection 2(a)(ii) above".	Accepted.
5(2)	Ms Jacqueline Humphreys Revd Paul Benfield *	Amend so as to repeal section 31(1)(b) CDM.	Not accepted.
5(2)	Ms Jacqueline Humphreys	Amend so that a penalty under s31(1)(b) CDM can only be imposed in cases of adultery and desertion.	Not accepted.
5(2)	Ms Jacqueline Humphreys	Amend so that a respondent has the right to see what information is sent to the President of Tribunals under section 31(1)(b) CDM.	Not accepted for inclusion in the draft Measure.
5(2)	Ms Jacqueline Humphreys	Amend to increase the influence of the President of Tribunals so that the archbishop be required to follow the President's views unless there is good reason not to do so.	Not accepted.

5(2)	Ven Paul Ferguson *	Amend to impose a duty on a bishop to notify the archbishop when a decree nisi is made, and to enable an archbishop to impose a penalty following the grant of a decree nisi.	Withdrawn
5(6)	Mr Clive Scowen *	After "section 30(1)(a)(ii)" delete the word "above".	Accepted.
5(6)	Steering Committee #	Change the word "offence" in the second line to "conviction".	Accepted.
6(2) and 7(2)	Mr Clive Scowen *	Widen the power of suspension to include where a prison sentence is imposed for a summary conviction.	Accepted.
6(4)	Steering Committee #	Amend to leave out all the words following the word "earlier" and insert the words ", save that a further notice of suspension under subsection (1)(c) or (d) may be served pending conclusion of any step taken under section 30(2) or (4), and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions".	Accepted.
9(2)	Mr Clive Scowen *	Leave out the words "as follows" and insert the words "in accordance with subsections (3) to (6) below".	Accepted.
9(2), (5) and (6)	Steering Committee #	In each sub-clause replace the phrases "shall be amended" or "shall be substituted" with "is amended" and "is substituted".	Accepted.
Schedule, paragraph 1	Mr Clive Scowen *	Leave out.	Withdrawn.
Schedule, paragraph 3	Mr Clive Scowen *	Amend to provide that a chair appointed to act in place of the Vicar-General in a complaint against an archbishop should be drawn from the provincial panel of the other province.	Withdrawn.
Schedule, paragraph 3	Mr Clive Scowen *	Amend to provide that the non-episcopal clerical member to hear a complaint against an archbishop should be drawn from the provincial panel of the other province.	Accepted.
Schedule	Steering Committee #	Insert a new paragraph to provide in s.4 CDM that the president or deputy president of tribunals may select any person who may be appointed as the chair of a disciplinary tribunal to act in his place when he is absent or unable or unwilling to act.	Accepted.

APPENDIX II DESTINATION TABLE

GS 1814 (as at First Consideration)	GS 1814A (as amended by the Revision Committee)
1(1)	1(1)
1(2)	-
1(3)	1(2)
1(4)	1(3)
1(5)	1(4)
2	2
3(1) – (4)	3(1) – (4)
-	3(5)
-	3(6)
4	4
5	5
6	6
7	7
8	8
9	9
10	10
Schedule:	Schedule:
Paragraph 1	Paragraph 1
-	Paragraph 2
-	Paragraph 3
Paragraph 2	Paragraph 4
Paragraph 3	Paragraph 5
Paragraph 4	Paragraph 6
-	Paragraph 7
Paragraph 5	Paragraph 8
Paragraph 6	Paragraph 9
Paragraph 7	Paragraph 10
Paragraph 8	Paragraph 11
Paragraph 9	Paragraph 12

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