

## GENERAL SYNOD

CLERGY DISCIPLINE (AMENDMENT) RULES 2013  
CLERGY DISCIPLINE APPEAL (AMENDMENT) RULES 2013EXPLANATORY MEMORANDUMIntroduction

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 – the Clergy Discipline Rules 2005 ('the existing rules') and the Clergy Discipline Appeal Rules 2005 ('the existing appeal rules') – which were approved by the General Synod. They deal with detailed and technical procedural matters and, as statutory instruments, they have the force of law.
3. At the group of sessions in July 2012 final approval was given by the General Synod to the Clergy Discipline (Amendment) Measure which makes certain amendments to the CDM. The existing rules and the existing appeal rules therefore now need to be revised to take account of those amendments, and to that end the Rule Committee has prepared the Clergy Discipline (Amendment) Rules 2013 and the Clergy Discipline Appeal (Amendment) Rules 2013. The Rule Committee has also taken this opportunity to revise the existing rules in various other respects.
4. Copies of the existing rules as amended by the proposed Clergy Discipline (Amendment) Rules (GS Misc 1051), and of the existing appeal rules as amended by the proposed Clergy Discipline Appeal (Amendment) Rules (GS Misc 1052) can be downloaded from <http://www.churchofengland.org/about-us/structure/general-synod.aspx>. Hard copies of GS Misc 1051 and GS Misc 1052 will be available from the enquiries desk in the Central Hall at the University of York from Friday 5<sup>th</sup> July, or can be requested in advance from Mr Andrew Brown, Head of Synod Support ([andrewj.brown@churchofengland.org](mailto:andrewj.brown@churchofengland.org)).

Explanation of the Clergy Discipline (Amendment) Rules 2013

5. **Rule 2** will enable complainants to request that their contact details (ie their address, telephone number and email address) should be withheld from the respondent cleric. If they do make such a request, they will need to give reasons, and thereafter their contact details will not be disclosed to the respondent unless the diocesan registrar directs that they should be disclosed. If the diocesan registrar does direct that the complainant's contact details should be disclosed, the complaint will lapse unless the complainant informs the registrar that he or she

wishes the complaint to proceed even though the complainant's contact details will be disclosed to the respondent. The Rule Committee makes this amendment because normally there is no need for a respondent to be informed of the contact details of a complainant (usually a respondent only needs to know the name of the complainant, which will always be disclosed), whereas disclosing contact details could unfairly deter victims from making complaints if they are fearful of the respondent.

6. **Rule 3** applies a similar principle to rule 2 above in respect of witness statements in support of a complaint – rule 3 will enable the maker of a witness statement to withhold his or her contact details. If the diocesan registrar directs that, notwithstanding the request, the witness's contact details should be disclosed then the statement will not be used in the proceedings unless the complainant requests otherwise.
7. **Rule 4** will enable a complainant to withhold contact details from a respondent when applying to the President of Tribunals for permission to make a complaint out of time. Where a request, with reasons, for non-disclosure is made, the complainant's contact details will be withheld from the respondent unless the President directs otherwise. The application for permission will then lapse unless the complainant informs the President that the complainant nonetheless wishes the application to proceed.
8. **Rule 5** corrects an error in the existing rule 9, which wrongly referred to a paragraph '(c)'.
9. **Rule 6** makes consequential changes to the existing rule 10 in the light of rules 2, 3 and 4 above. It also enables a diocesan registrar in exceptional circumstances to delay notifying a respondent for no longer than necessary that a complaint has been made – this might be suitable in safeguarding cases where secular authorities are investigating the matter and do not wish a respondent to be alerted yet that a complaint has been made.
10. **Rule 7** will enable the maker of a witness statement in support of the respondent's answer to request with reasons that his or her contact details should be withheld from the complainant. If the diocesan registrar, notwithstanding the request, directs that the witness's contact details should be disclosed to the complainant, the witness statement will continue to be used in the proceedings – this is in contrast to the position concerning witness statements that support a complaint. The Rule Committee has made this distinction because it would not be in the interests of justice if a witness statement in support of an answer were to be withdrawn. A complainant generally has an option to withdraw from complaint proceedings and might choose to do so if a witness does not wish his or her contact details to be disclosed to the respondent – a respondent, however, has no similar option to withdraw from complaint proceedings.
11. **Rule 8** deals with the new procedures introduced by the Clergy Discipline (Amendment) Measure whereby a bishop and respondent can agree a penalty by consent even after the bishop has directed that the complaint be formally investigated by the Designated Officer.

12. **Rule 9** amends the existing rule 28(5) so that it accords more closely with section 17 of the CDM and makes it clearer that the Designated Officer can authorise another person to carry out the investigation.
13. **Rule 10** corrects an error in the existing rule 31(3).
14. **Rule 11.** If a member of a disciplinary tribunal is unable to sit (for example because of illness) and needs to be replaced shortly before a hearing is due to take place, the existing provision in rule 37 could lead unfortunately to the postponement of the hearing when the respondent takes 14 days to make representations to the President about the suitability of a replacement member. Rule 11 will enable the President when a hearing date has been fixed to shorten the time within which the respondent may make representations.
15. **Rule 12.** This rule will prevent disciplinary proceedings from being frustrated where the respondent refuses to acknowledge, or attempts to avoid, service of notice of the hearing.
16. **Rules 13 and 14.** These rules make provision for where the Chair of the disciplinary tribunal dies or is incapacitated after the tribunal has determined a complaint or decided upon a penalty but not yet pronounced it in public. The Registrar of Tribunals will be able to nominate another member of the tribunal to make the pronouncement in public. Furthermore, if any one member (and limited to one member) of a disciplinary tribunal dies or is incapacitated after a disciplinary tribunal has determined a complaint but not yet made a decision about penalty, the President will be able to appoint a new member in substitution for that original member, provided the new member is from the same category of the provincial list as the original member and the respondent has an opportunity to make representations about the suitability of the proposed person.
17. **Rule 15** will amend the existing rule 60(1) so that it follows more closely the wording of section 36 of the CDM.
18. **Rules 16 and 17** are in respect of a new provision in the Clergy Discipline (Amendment) Measure which gives bishops power to impose a suspension when a priest or deacon is convicted of certain criminal offences or placed on a barred list under the Safeguarding Vulnerable Groups Act 2006.
19. **Rule 18** will permit a bishop, when suspending a priest or deacon, to send copy of the notice of suspension to the relevant chief constable, the local authority designated officer, the diocesan safeguarding officer, a suffragan or assistant bishop of the diocese, and any other person whom the bishop considers should be notified of the suspension. This power will be particularly useful in safeguarding cases.
20. **Rules 19, 20 and 21** are consequential upon the changes made by rules 16 to 18.
21. **Rule 22** removes the requirement for a bishop to wait for a criminal court to send him a certificate of conviction before a penalty can be imposed. In practice waiting for the certificate can cause unnecessary delay. Rule 22 does not, however, affect the basic principle that a penalty can be imposed only after the

conviction has become conclusive (i.e. where time to appeal has expired and no appeal is pending).

22. **Rule 23** makes procedural provision for where the bishop applies to the President for an extension of the two year period within which a penalty may be imposed following a conviction for certain offences or where there has been a matrimonial breakdown on certain grounds.
23. **Rule 24** will ensure that a priest or deacon sees correspondence passing between the bishop and the President where the bishop consults the President when considering an appropriate penalty under section 30 of the CDM.
24. **Rules 25 and 26** are consequential upon changes made by the Clergy Discipline (Amendment) Measure requiring clergy who are on a barred list under the Safeguarding Vulnerable Groups Act to be entered on the Archbishops' list.
25. **Rule 27** makes provision in respect of notices of suspension for bishops and archbishops if they are convicted of certain criminal offences or placed on a barred list under the Safeguarding Vulnerable Groups Act 2006.
26. **Rule 28** makes express provision enabling the President to give directions and to hold a hearing when dealing with any application, appeal or request under the CDM.
27. **Rule 29** is consequential upon a provision in the Clergy Discipline (Amendment) Measure which enables the President and Deputy President to select any person who may be appointed as a Chair of a disciplinary tribunal to act in their place.
28. **Rules 30 to 35**. These rules make changes to forms that are consequential upon amendments made by other rules.
29. **Rule 36** introduces new forms in connection with rules 16 and 27.

### **Explanation of the Clergy Discipline Appeal (Amendment) Rules 2013**

30. **Rule 2** is consequential upon changes to the law made by the Clergy Discipline (Amendment) Measure, so that a party wishing to appeal will be required to obtain leave to appeal from the disciplinary tribunal or the relevant appellate court.
31. **Rule 3** makes provision as to how an application for leave to appeal may be made. An application can be made either orally to the disciplinary tribunal when it pronounces its decision or imposes a penalty, or in writing to the appropriate appellate court (which is the Arches Court of Canterbury when proceedings take place in the province of Canterbury, or the Chancery Court of York for proceedings in the province of York). Where an application is made to the appellate court the written application must contain certain prescribed information and must have a completed draft notice of appeal attached to it setting out the reasons for appealing together with a copy of the disciplinary tribunal's decision. Rule 3 also provides for how the appellate court determines an application for leave to appeal, and reflects parallel provision in the Clergy Discipline (Amendment) Measure.

32. **Rule 4** is in two parts and applies to appeals made by the respondent cleric. The first part relates to appeals that are made when the disciplinary tribunal has given leave to appeal – in those cases the appellant will need to attach to the notice of appeal a copy of the tribunal’s order granting leave to appeal. The second part ensures that a notice of appeal may only raise issues in respect of which leave to appeal has already been granted.
33. **Rule 5** is similar in terms to rule 4 above, but applies to appeals made by the Designated Officer.
34. **Rule 6** provides time limits within which a notice of appeal must be sent or delivered to the Provincial Registrar. The time for appealing where leave has been granted by the appellate court is 7 days shorter than where leave has been granted by the disciplinary tribunal – this is because an appellant will already have prepared a draft notice of appeal when applying for leave to appeal from the appellate court.
35. **Rule 7** introduces for applications for permission to appeal out of time provisions that are similar to those in respect of applications for leave to appeal. In particular, such applications will in future be determined by the Dean of the Arches and Auditor sitting with one other judge, and permission to appeal out of time may be given where one of those judges is satisfied that there is a real prospect of success or a compelling reason why the appeal should be heard.
36. **Rule 8** provides that a penalty imposed by a disciplinary tribunal cannot be implemented until an application for leave to appeal has been dealt with.
37. **Rule 9** will enable the Provincial Registrar to give case management directions when an application for leave to appeal or to appeal out of time has been made.
38. **Rule 10** gives effect to provisions introduced by the Clergy Discipline (Amendment) Measure which enable the respondent cleric to make representations to the President about the suitability of any member of the appellate court whom the President is considering appointing.
39. **Rules 11, 12, 13, 14 and 15** make minor amendments so that rules 15, 21, 23, 24 and 25 in the existing appeal rules apply to the hearing of applications as well as final appeals.
40. **Rule 16** is a consequential amendment extending the definition of “appellate court” to include the court as constituted for hearing applications as well as final appeals.
41. **Rules 17 and 18** make changes to forms that are consequential upon amendments made by other rules.
42. **Rule 19** introduces new forms in connection with rule 3.