

GENERAL SYNOD
AMENDING CODE OF PRACTICE
UNDER THE CLERGY DISCIPLINE MEASURE 2003

EXPLANATORY MEMORANDUM

Introduction

1. The Clergy Discipline Measure ('the CDM') has been fully in force since 1st January 2006. It provides procedures which enable bishops to deal with the vast majority of formal complaints about clergy misconduct (other than complaints relating to doctrine, ritual or ceremonial, which come within the provisions of the Ecclesiastical Jurisdiction Measure 1963). For the small proportion of cases that cannot be resolved by bishops the CDM has established a modern tribunal system which is compliant with human rights legislation.
2. The body responsible for overseeing the operation of the CDM in practice is the Clergy Discipline Commission ('the Commission'), which is constituted under section 3 of the CDM. Under section 39 of the CDM it is the duty of the Commission to formulate guidance for the purposes of the CDM generally, and with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice. The Commission may at any time amend or replace a code, again with the approval of the Dean of the Arches and Auditor. A code, or any amendments, cannot come into force until approved by the General Synod. In July 2005 the General Synod gave approval to a Code of Practice under section 39 ('the Code') which has been in force since 1st January 2006. The Code was revised, with Synod's approval, in February 2011.
3. When producing or revising a code, the Commission has to work within the framework of the CDM and the Clergy Discipline Rules ("the Rules") which is a statutory instrument dealing with detailed and technical matters of procedure. The Code is not intended to be a detailed work on all aspects of the complaint procedures – it would be far too long if it were. Instead it aims to be a relatively simple guide to point users in the right direction, and to draw their attention to the relevant provisions of the CDM and the Rules. The Code concentrates on complaints against parochial clergy, who form the majority of those who are in active ministry.
4. The Commission is proposing to make further revisions to the Code by way of an Amending Code. The revisions mainly arise out of changes to the law made by the Clergy Discipline (Amendment) Measure 2013 when it comes into force, and by procedural changes contained in the proposed Clergy Discipline (Amendment) Rules (GS 1907).
5. Copies of the Code as amended by the Amending Code can be downloaded from <http://www.churchofengland.org/about-us/structure/general-synod.aspx> (GS Misc 1053). Hard copies of GS Misc 1053 will be available from the enquiries desk in the Central Hall at the University of York from Friday 5th July, or can be

requested in advance from Mr Andrew Brown, Head of Synod Support (andrewj.brown@churchofengland.org).

Explanation of the proposed revisions to the Code

Paragraph numbers below refer to paragraphs in the existing Code of Practice.

6. **Paragraph 7:** The amendment here reflects changes made by the Clergy Discipline (Amendment) Measure 2013 requiring clergy to obtain leave to appeal when they wish to challenge the determination of a tribunal.
7. **Paragraph 23:** The word “normally” is being added to take account of the new section 8(4) of the CDM (introduced by the Clergy Discipline (Amendment) Measure) which provides that it is unbecoming or inappropriate conduct to belong to, or to promote, or solicit support for, a political party which is incompatible with the teachings of the Church in relation to race equality.
8. **Paragraphs 41, 44, 53, 66, 71, 72 and 110, appendices B1 and B4:** These amendments are consequential upon procedural changes proposed by the Clergy Discipline (Amendment) Rules which allow complainants and witnesses to withhold their contact details (but not their names). Paragraph 71 also refers to the diocesan registrar being able to delay notifying the respondent, in exceptional circumstances and for no longer than is necessary, that a complaint has been made – this may be necessary in safeguarding cases if secular authorities need to be consulted.
9. **Paragraph 54:** The changes here are in two parts. The addition of the first sentence is not a substantive change, because it has been moved to this paragraph from the paragraph above. The second change, contained in the last bullet point, clarifies that where a complainant has been manipulated or abused, and was a child at the relevant time, that in particular may be a justifiable reason for not bringing a complaint in time (even where the complainant is now an adult).
10. **Paragraph 113:** The sentence relating to suspension following arrest is being omitted because the Code deals elsewhere at paragraphs 216 to 230 with the imposition of suspensions generally.
11. **Paragraph 154:** This amendment is consequential upon the amendment made by the Clergy Discipline (Amendment) Measure which now enables a bishop and respondent to agree upon a penalty by consent if the respondent in writing admits misconduct, even if the complaint has meanwhile been referred to the Designated Officer for investigation.
12. **Paragraphs 163 to 167:** The Clergy Discipline (Amendment) Measure gives bishops wider powers to deal with clergy following convictions for criminal offences. Bishops will now be able to impose penalties without further proceedings when a member of the clergy has been convicted in England or Wales of any criminal offence which is not a summary offence – previously a penalty could only be imposed by the bishop if the criminal proceedings resulted in a prison sentence. Amendments to paragraphs 163 to 167 reflect this change in the law, and paragraph 163 is further amended in respect of the President’s new

power to extend the two year period within which the bishop must act following a conviction. Paragraph 164 is amended to refer to the proposed requirement in the Clergy Discipline (Amendment) Rules that the respondent should see correspondence passing between the bishop and the President when the bishop consults the President as to the appropriate penalty.

13. **Paragraph 168:** This revises and clarifies guidance as to when complaints can be pursued under the CDM, and upon what basis, following an acquittal in a criminal court. It is put forward in response to a recommendation made in the Commissaries' interim report following the visitation to the diocese of Chichester.
14. **Paragraphs 169 and 170:** These paragraphs relate to the bishop's power to impose a penalty following a marital breakdown where a priest or deacon has committed adultery, behaved unreasonably or deserted the petitioner. Paragraph 169 will now refer to the President's new power to extend the two year period within which the bishop must act, and paragraph 170 will refer to the proposed requirement in the Clergy Discipline (Amendment) Rules for the respondent to see correspondence passing between the bishop and the President when the bishop consults the President as to the appropriate penalty.
15. **New paragraph after paragraph 172:** As a result of the Clergy Discipline (Amendment) Measure, the bishop will be able to remove from office and prohibit a member of the clergy who is entered by the Disclosure and Barring Service on either of the barred lists established under the Safeguarding Vulnerable Groups Act 2006. The proposed new paragraph relates to this.
16. **Paragraphs 173 and 174:** The Clergy Discipline (Amendment) Measure specifies the particular matters that a priest or deacon must report to the bishop following a marital breakdown – paragraph 173 is being amended to reflect this. Paragraph 174 is being amended to cover the duty to notify the bishop when placed on a barred list under the Safeguarding Vulnerable Groups Act 2006.
17. **Paragraphs 201 and 202:** There is a proposal in the Clergy Discipline (Amendment) Rules that the tribunal chair can sign the tribunal's written determination on behalf of all tribunal members, instead of requiring each member of the tribunal to sign. Paragraphs 201 and 202 are accordingly being revised to reflect this.
18. **New paragraph after paragraph 221:** This reflects the bishop's additional powers under the Clergy Discipline (Amendment) Measure to suspend following conviction or inclusion on a barred list under the Safeguarding Vulnerable Groups Act 2006 whilst the bishop considers whether to impose a penalty.
19. **Paragraph 222:** The amendments in this paragraph are consequential upon the bishop's additional powers to suspend referred to under paragraph 221 above.
20. **Paragraph 223:** The amendment in paragraph 223 is consequential upon proposals in the Clergy Discipline (Amendment) Rules which would allow a bishop to serve a notice of suspension on any person whom the bishop considers should be notified.

21. **Paragraphs 231 and 232:** The amendments here reflect changes made by the Clergy Discipline (Amendment) Measure 2013, because there is no longer an automatic right to appeal (clergy now have to obtain permission to appeal where they wish to challenge the determination of a tribunal, and permission can be granted either by the tribunal or the appropriate appellate court).
22. **Paragraphs 235 and 236:** Under the Clergy Discipline (Amendment) Measure 2013 clergy whose names are included on a barred list under the Safeguarding Vulnerable Groups Act 2006 are to be entered on the Archbishops' list under category (dd) – paragraphs 235 and 236 are being amended to reflect this.

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June 2013