

GENERAL SYNOD**DRAFT SAFEGUARDING AND CLERGY DISCIPLINE MEASURE
AND
DRAFT AMENDING CANON NO. 34****Explanatory Memorandum****Introduction**

1. The draft Measure and Amending Canon flow from Synod's approval at the February 2014 group of sessions of a motion moved by the Bishop of Durham "*That this Synod request that draft legislation be brought forward to give effect to the proposals for legislative change set out in GS 1941*".
2. GS 1941 set out the Archbishops' Council's proposals for legislative change, following a debate in the Synod in July 2013 in connection with issues raised in the Archbishop of Canterbury's visitation to the diocese of Chichester. It considered the recommendations of the Archbishop's Commissaries and also took into account other submissions made in the course of a consultation undertaken by the Archbishops' Council last year.
3. The consultation involved diocesan bishops, suffragan bishops, diocesan safeguarding advisors, diocesan registrars, diocesan secretaries, diocesan chancellors, chairs of diocesan Houses of Clergy, archdeacons, the Dean of Arches and Auditor, the Vicars-General, the Ecclesiastical Judges Association and the Ecclesiastical Lawyers Association. The consultation paper was also circulated to all members of the Synod as an annex to GS 1896, and representative members of Survivor Groups were invited to attend the Synod Debate last July.
4. The legislative package is in two different instruments. A draft Measure is required to amend the Clergy Discipline Measure 2003 and the Churchwardens Measure 2001, and also to impose a new duty on certain persons to have due regard to guidance issued by the House of Bishop on safeguarding issues. The draft Measure will also amend the Church Representation Rules. The Amending Canon is the appropriate means to amend existing canon law in respect of the exercise of ministry by ordained ministers, the admission and licensing of readers and lay workers, and the introduction of new canonical provisions in respect of the appointment of bishops' diocesan safeguarding advisers and the regulation of risk assessments on clergy.

The Draft Measure**Clause 1 - Churchwardens**

5. Under section 2 of the Churchwardens Measure 2001 a person is disqualified from being elected or serving as a churchwarden if convicted of certain offences mentioned in schedule 1 to the Children and Young Persons Act 1933 as amended ('the 1933 Act'). A person is also currently disqualified if disqualified from being a charity trustee under section 72(1) Charities Act 1993 (now section 178(1) Charities Act 2011) unless he or she is granted a waiver by the Charity Commission. A person can also be disqualified under section 10(6) Incumbents (Vacation of Benefices) Measure 1977 as a result of a pastoral breakdown. However, there is no disqualification under current law of a person

who is on a barred list under the Safeguarding Vulnerable Groups Act 2006. **Clause 1(1)** of the draft Measure will now make provision for this.

6. **Clause 1(2)** gives a bishop the power to waive the disqualification of a person who has been convicted of an offence listed in Schedule 1 to the 1933 Act.¹ Guidance for bishops on when to exercise this new power may be issued by the House of Bishops in due course (see the note on clause 3 below). The bishop will waive disqualification by a notice in writing, with a copy served on the diocesan registrar so that a record is kept in the diocese.
7. **Clause 1(3)** will enable a bishop to suspend a churchwarden who is arrested on suspicion of committing an offence listed in Schedule 1 to the 1933 Act pending conclusion of the criminal proceedings. Suspension will not be automatic upon arrest – the bishop will need to exercise his discretion in the particular circumstances of each individual case. Copies of a notice of suspension are to be served on the archdeacon, the rural or area dean, clergy in the parish concerned, the other churchwarden or churchwardens in the parish, and the diocesan registrar.
8. **Clauses 1(4), 1(5) and 1(6)** make consequential amendments to section 8 of the Churchwardens Measure 2001 and to the Church Representations Rules.

Clause 2 – PCC members

9. Under the House of Bishops' policy for safeguarding children (*Protecting all God's Children*²), the Parochial Church Council ('PCC') is jointly responsible with the incumbent for ensuring that diocesan safeguarding policies are implemented locally. Similar safeguarding-related disqualifications as those that will apply to the office of churchwarden by virtue of clause 1 are therefore being extended to other lay members of PCCs.
10. **Clause 2(1)** therefore amends the Church Representation Rules so that any person on a barred list under the Safeguarding Vulnerable Groups Act 2006 will be disqualified from membership of a PCC or District Church Council ('DCC'), and this will extend to membership of any Church of England synod. Likewise, a person who has been convicted of an offence mentioned in Schedule 1 to the 1933 Act will also be disqualified, subject to the power conferred by **clause 2(3)** on the bishop to waive the disqualification in appropriate circumstances.
11. **Clause 2(4)** will enable the bishop to suspend a member of a PCC, DCC or synod upon arrest for committing an offence listed in Schedule 1 to the 1933 Act – this is similar to the new power in clause 1(3) in respect of the suspension of churchwardens.
12. **Clauses 2(2), 2(5), and 2(6)** make consequential amendments to the Church Representation Rules, including amendments to notices of annual parochial church meetings and forms of nomination to diocesan synods setting out the grounds for disqualification.

¹ Schedule 1 of the 1933 Act includes a wide range of offences against children under the age of 18. For instance, an assault by a person aged 18 on another person aged 17 would come within the Schedule; permanent disqualification from holding office as churchwarden in these circumstances might be assessed to be harsh.

² 4th edition, issued in 2010

13. **Clause 2(8)** makes an amendment so that gender neutral language is used in the nomination form to the diocesan synod.

Clause 3 – House of Bishops’ guidance

14. The Church of England’s safeguarding policies are set out by the House of Bishops in publications such as *Protecting All God’s Children* and *Promoting a Safe Church*³. They provide guidance and aim to highlight good practice and standards.
15. There is currently no general duty on office holders in the church to have due regard to those safeguarding policies. **Clause 3** will impose a new duty to that effect. It will apply to all ordained clergy authorised by a bishop to exercise ministry, all archdeacons, bishops, licensed readers and lay workers, churchwardens and PCCs. In respect of PCCs the duty will be on them in their corporate capacity.
16. A duty to ‘have due regard’ to guidance means that the person under the duty is not free to disregard it but is required to follow the guidance unless there are cogent reasons for not doing so. This sets a high standard. It means that a person can only depart from the guidance if the reasons for doing so are clear, logical and convincing.

Clause 4 – meaning of child and vulnerable adult

17. **Clause 4(1) and 4(2)** defines “child” and “vulnerable adult” for the purposes of clauses 5 and 6.
18. The term “vulnerable adult” has no universally accepted definition; different statutes define “vulnerable adult” in different ways depending on their own purposes and contexts. **Clause 4(2)** is based upon the definition of “vulnerable adult” found in *Promoting a Safe Church*.⁴
19. **Clauses 4(3) to 4(8)** will enable the definition of “vulnerable adult” to be amended by order of the Archbishops’ Council, subject to the approval of Synod, and subject to being laid before Parliament.

Clause 5 – limitation period for complaints in sexual misconduct cases

20. **Clause 5** removes the one year limitation period under the Clergy Discipline Measure 2003 (‘CDM’) for bringing a complaint where the alleged misconduct is of a sexual nature towards a child or vulnerable adult. Under the existing provisions of the CDM such complaints can be made after one year has passed since the misconduct, but only if the President of Tribunals upon application grants permission to make the complaint out of time. The one year limitation period has been criticised for inhibiting victims of abuse from making complaints, since it may take many years before they are ready and able to come forward.
21. The removal of the limitation period will apply in respect of relevant misconduct committed before the draft Measure comes into force, even if the limitation period of 1 year has meanwhile lapsed.

³ This sets out the policy for safeguarding adults in the Church of England – 1st edition, issued in 2006.

⁴ “Any adult aged 18 or over who, by reason of mental or other disability, age, illness or other situation is permanently or for the time being unable to take care of him or herself, or to protect him or herself against significant harm or exploitation.”

Clause 6

22. A bishop currently has no power under the CDM to suspend a cleric when an application is made to the President of Tribunals for permission to make a complaint out of time, regardless of the seriousness of the allegations. **Clause 6** will correct this omission, and will apply not only to complaints in respect of sexual misconduct but also to complaints alleging other misconduct.
23. **Clause 6(1)** applies to priests and deacons and will add a new section 36A to the CDM. The new power of suspension will be subject to certain conditions. The new section 36A(3) CDM will require the bishop to be satisfied that a suspension of a priest or deacon is *necessary*. Under the new section 36A(4) and 36A(5) CDM before the bishop imposes a suspension he will have to seek advice from the diocesan registrar on whether the complainant has a proper interest, whether there is sufficient substance to the complaint, and whether a suspension is necessary in all the circumstances of the case.
24. The new section 36A(6) to 36A(11) CDM makes provision for revocation and termination of a suspension, and for renewal when appropriate.
25. The new section 36A(12) will enable the bishop to make arrangements for the parish whilst the suspension is in place, and give the respondent the right to appeal against the suspension to the President of Tribunals.
26. **Clause 6(2)** makes similar provision in respect of the suspension of archbishops and bishops pending applications to the President of Tribunals for permission to make a complaint out of time. Clause 6(2) adds a new section 37A to the CDM.

Clause 7

27. **Clause 7** will enable the two provincial Registrars of Tribunals to delegate their functions under the CDM to any person, provided the President of Tribunals consents. Under the existing terms of section 5 CDM they can only delegate to each other – this would be problematic in any complaint proceedings if they both needed to avoid involvement on professional or personal grounds. Clause 7 will avoid such difficulties.

Clause 8

28. **Clause 8** deals with citation of the Measure, commencement, and extension to the Channel Islands and the Isle of Man.

The Draft Amending Canon

Paragraph 1 – Canon B 43.1: relations with other churches

29. Canon B 43.1 enables ministers and laity from other churches to be invited by an incumbent to perform certain duties if they are ‘in good standing’ of a church to which the canon applies.
30. **Paragraph 1** will amend Canon B 43.1 so that the duty to ensure a person from another church is of good standing will expressly fall upon the incumbent who is giving the invitation. The incumbent will be required to make such enquiries as are appropriate in all the circumstances – if the person is local and already well-known to the incumbent

then the enquiries would not need to be as thorough as enquiries about someone who was not previously known to the incumbent.

Paragraph 2 – Canon C 8

31. Canon C 8.2 currently provides that a minister with the cure of souls may allow a minister whom he or she considers to be of good life and standing to minister within his or her church or chapel for a period of not more than seven days in 3 months (which could mean officiating on alternate Sundays throughout the whole year). This means that a priest can be invited into a parish to officiate even when his or her authority to minister has been withdrawn by a bishop on safeguarding grounds. **Paragraph 2(2)** will prevent this by providing that only a minister who already has authority under Canon C 8 to officiate (whether in that diocese or another diocese) can be allowed by the minister with the cure of souls to officiate in his or her church or chapel.
32. **Paragraph 2(3)** will prevent a cleric from robing during divine service when prohibited or suspended under the CDM. It will also make it a disciplinary matter for a minister with the cure of souls to allow another minister to robe or officiate if he or she knows the other minister has been prohibited or suspended, or does not have a bishop's authority to officiate.
33. **Paragraph 2(3)** will also add a new paragraph 8 to Canon C 8 to provide that all clergy with a diocesan bishop's authority to officiate will have to participate in arrangements approved by the bishop for training in matters relating to the safeguarding of children and vulnerable adults. At present, only clergy with common tenure are under a duty to participate in arrangements approved by the bishop for their continuing ministerial education.

Paragraph 3 – bishops to appoint safeguarding advisors

34. **Paragraph 3** amends Canon C 18 by requiring a diocesan bishop to appoint a safeguarding advisor to advise the bishop on matters relating to the safeguarding of children and vulnerable adults. It also enables the House of Bishops to make provision by Regulations as to the eligibility of persons who may be appointed as safeguarding advisors and as to their functions. This will ensure there is consistency across the dioceses and that certain minimum standards are observed.

Paragraph 4 – risk assessments

35. There is currently no power for a bishop to compel a priest or deacon to undergo a risk assessment when the bishop becomes concerned about him or her from a safeguarding perspective.
36. **Paragraph 4** will introduce a new Canon C 30 which will enable a diocesan bishop to direct a priest or deacon holding preferment to undergo a risk assessment when the bishop is satisfied that it is justified to do so in all the circumstances. The cleric being assessed will be able to invite the President of Tribunals to review the bishop's reasons for requiring an assessment. If the bishop is plainly wrong to give the direction, the President will revoke the direction. If the cleric refuses to comply with the bishop's direction without good cause (s)he will be regarded as having failed to do an act required by the laws ecclesiastical under section 8(1)(b) CDM – this could lead to disciplinary proceedings.

37. The House of Bishops will be able to regulate how and by whom risk assessments are carried out, so that there is consistency across the dioceses and minimum standards of good practice are met. The regulations will be laid before Synod.
38. The new Canon C 30 will apply to bishops and archbishops so that they too can be directed to undergo safeguarding risk assessments, and face disciplinary proceedings if they refuse without good cause.

Paragraph 5 – licensing of readers

39. This amends Canon E 6 in respect of the licensing of readers.
40. **Paragraph 5(2)** inserts into Canon E 6 a new provision (at paragraph 3C) enabling the diocesan bishop to suspend a reader's licence pending procedures for the revocation of the licence. **Paragraph 5(3)** will introduce a new power for the bishop to suspend a reader who is arrested on suspicion of committing an offence mentioned in Schedule 1 to the 1933 Act.
41. **Paragraph 5(3)** also amends Canon E 6 with regard to safeguarding training for readers. It provides in a new provision to the effect that the bishop will not be able to license a reader unless the bishop is satisfied that the candidate has undergone suitable safeguarding training. Furthermore, the diocesan bishop will be required to ensure that there are arrangements in place for all licensed readers to be provided with suitable safeguarding training.
42. Canon E 6 will be further amended to make provision for a person to be disqualified from holding the office of reader if convicted of an offence mentioned in Schedule 1 to the 1933 Act (subject to the bishop being able to waive the disqualification if he considers it appropriate to do so), or if included in a barred list under the Safeguarding Vulnerable Groups Act. These disqualifications from office are similar to the provisions in the draft Measure in respect of churchwardens and PCC members.

Paragraph 6 – licensing of lay workers

43. **Paragraph 6** relates to the admission and licensing of lay workers under Canon E 8. It amends Canon E 8 so that provisions which are similar to those in paragraph 5 of the Amending Canon in respect of licensed readers will apply to lay workers.

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June 2014