

Draft Safeguarding and Clergy Discipline Measure

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A draft of a Measure to make provision about safeguarding children and vulnerable adults; and to amend the Clergy Discipline Measure 2003.

Safeguarding children and vulnerable adults

1 Churchwardens: disqualification or suspension

- (1) In section 2 of the Churchwardens Measure 2001 (general disqualifications), after subsection (1) insert—
- “(1A) A person shall be disqualified from being chosen for the office of churchwarden if the person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).” 5
- (2) After subsection (3) of that section insert—
- “(3A) A person’s disqualification under subsection (2)(a) may be waived by the bishop serving written notice on the person. 10
- (3B) On serving a notice under subsection (3A), the bishop shall give a copy of the notice to the registrar of the diocese; and the registrar shall file the copy in the diocesan registry.”
- (3) After section 6 of that Measure insert—
- “6A Suspension 15**
- (1) Where a churchwarden is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933, the bishop may, pending a conclusion of the matter, suspend the person from the office of churchwarden by serving written notice on the person. 20
- (2) The bishop may at any time revoke the suspension by serving written notice on the person.
- (3) On serving a notice under subsection (1) or (2), the bishop shall give a copy to— 25
- (a) the archdeacon in whose archdeaconry the parish is situated,
- (b) the rural dean or the area dean of the deanery in which the parish is situated,
- (c) the clergy who hold office in the parish,
- (d) the other churchwarden or churchwardens of the parish, and 30
- (e) the registrar of the diocese.
- (4) The registrar shall file the copy given under subsection (3)(e) in the diocesan registry.
- (5) For the purposes of subsection (1), there is a conclusion of a matter when— 35
- (a) a decision is taken not to charge the person with the offence, or

- (b) where the person is charged with the offence, the proceedings for the offence are concluded.
- (6) Section 2(2)(b) applies to the reference in subsection (1) to an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 as it applies to the reference in section 2(2)(a).” 5
- (4) In section 8 of that Measure (vacation of office), in subsection (1)(c), after “section 2(1),” insert “(1A),”.
- (5) After subsection (1) of that section insert –
- “(1A) Where the office of churchwarden is vacated under subsection (1)(c) on a person being disqualified under section 2(2)(a), the person may resume the office if the disqualification is waived under section 2(3A) and if the office has remained vacant.” 10
- (6) In Part 6 of the Church Representation Rules (disqualifications etc.), in rule 46A (which becomes sub-paragraph (1) of that rule) –
- (a) in paragraph (a), omit “a churchwarden,” 15
- (b) in paragraph (b), omit “churchwarden or”, and
- (c) after sub-paragraph (1) insert –
- “(2) For provision about disqualification from being chosen for the office of churchwarden, see section 2 of the Churchwardens Measure 2001; and for provision about vacation of office as such on becoming disqualified under that section, see section 8 of that Measure.” 20
- 2 Parochial church council members etc: disqualification or suspension**
- (1) In Part 6 of the Church Representation Rules (disqualifications etc.), in rule 46A (before which insert a cross-heading “Disqualification”) after paragraph (a) insert –
- “(aa) A person shall be disqualified from being nominated, chosen or elected or from serving as a member of a parochial church council, a district church council or any synod under these rules if the person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006). 30
- (ab) A person shall be disqualified from being nominated, chosen or elected or from serving as a member of a parochial church council, a district church council or any synod under these rules if the person has been convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933.” 35
- (2) In rule 46(1) of the Rules (vacation of seat by member of synod), in paragraph (f), after “46A(a)” insert “, (aa) or (ab)”. 40
- (3) After rule 46A of the Rules insert –
- “46B(1) A person’s disqualification under rule 46A(ab) may be waived by the bishop of the diocese in question giving the person notice in writing.
- (2) On giving a notice under paragraph (1), the bishop shall send a copy of the notice to the registrar of the diocese; and the registrar shall file the copy in the diocesan registry. 45

- (3) Where a person's seat is vacated under rule 46(1) on a person being disqualified under rule 46A(ab), the person may resume the seat if the disqualification is waived under paragraph (1) of this rule and if the seat has remained vacant."
- (4) After rule 46B of the Rules (as inserted by subsection (3)) insert – 5
- "Suspension*
- 46C (1) Where a member of a parochial church council, district church council or synod is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933, the bishop of the diocese may, pending a conclusion of the matter, suspend the person from the position in question by giving the person notice in writing. 10
- (2) The bishop may revoke the suspension by giving the person notice in writing.
- (3) On giving a notice under paragraph (1) or (2), the bishop shall give a copy of the notice to – 15
- (a) the clergy who hold office in the parish,
 - (b) the churchwardens of the parish, and
 - (c) the registrar of the diocese.
- (4) The registrar shall file the copy under paragraph (3)(c) in the diocesan registry. 20
- (5) For the purposes of paragraph (1), there is a conclusion of a matter when –
- (a) a decision is taken not to charge the person with the offence, or 25
 - (b) where the person is charged with the offence, the proceedings for the offence are concluded."
- (5) In Section 4 of Appendix 1 to the Rules (notice of annual parochial church council meeting), in note 3, after paragraph (a) insert –
- "(aa) A person shall be disqualified from being nominated, chosen or elected or from serving as a churchwarden or member of a parochial church council, a district church council or any synod under these rules if the person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006). 30
 - (ab) A person shall be disqualified from being nominated, chosen or elected or from serving as a churchwarden or member of a parochial church council, a district church council or any synod under these rules if the person has been convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933. 35
 - (ac) A person's disqualification under paragraph (ab) may be waived by the bishop of the diocese in question giving the person notice in writing." 40
- (6) In section 6 of Appendix 1 to the Rules (nomination to the House of Clergy or 45

House of Laity of the Diocesan Synod), in the notes, at the end insert –

“A person is disqualified from being nominated for membership of any Synod if the person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006).

A person is disqualified from being nominated for membership of any Synod if the person has been convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933; but the disqualification may be waived by the bishop of the diocese giving the person notice in writing.” 5

- (7) In that section of Appendix 1 to the Rules, in the note beginning “A person is disqualified”, for “he” substitute “the person”. 10

3 Guidance

- (1) A relevant person must have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults. 15

- (2) Each of the following is a relevant person –

- (a) a clerk in Holy Orders who is authorised to officiate in accordance with the canons of the Church of England;
- (b) a diocesan, suffragan or assistant bishop;
- (c) an archdeacon; 20
- (d) a person who is licensed to exercise the office of reader or serve as a lay worker;
- (e) a churchwarden;
- (f) a parochial church council.

4 Meaning of “child” and “vulnerable adult” 25

- (1) In this Measure, “child” means a person aged under 18.
- (2) In this Measure, “vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or distress, or otherwise. 30
- (3) The Archbishops’ Council may by order amend this section so as to amend the definition of “vulnerable adult”.
- (4) An order under this section may not be made unless –
- (a) a draft of the order has been laid before the General Synod and approved by it with or without amendment, and
 - (b) the draft so approved has been referred to the Archbishops’ Council. 35
- (5) On referral of the draft, the Council must –
- (a) if the draft was approved without amendment, make the order by applying its seal, or
 - (b) if the draft was approved with amendment – 40
 - (i) make the order by applying its seal, or
 - (ii) withdraw the draft for further consideration.
- (6) An order under this section comes into force when it is sealed by the Council.

- (7) If the Business Committee of the General Synod determines that a draft of an order under this section does not need to be debated by the General Synod, the draft is to be treated as approved for the purposes of this section unless a member of the General Synod gives notice in accordance with its standing orders that the member – 5
- (a) wishes the draft order to be debated, or
 - (b) wishes to move an amendment to it.
- (8) The power to make an order under this section is exercisable by statutory instrument; and the Statutory Instruments Act 1946 applies as if the order had been made by a Minister of the Crown and as if this Measure were an Act of Parliament providing for the instrument containing the order to be subject to annulment in pursuance of a resolution of either House of Parliament. 10

Clergy discipline proceedings

5 Removal of limitation period in sexual misconduct cases

- (1) In section 9 of the Clergy Discipline Measure 2003 (limitation period for disciplinary proceedings for misconduct), the text of which becomes subsection (1), at the end insert – 15
- “(2) Subsection (1) does not apply in a case where the misconduct in question is conduct of a sexual nature towards a child or vulnerable adult. 20
- (3) “Child” means a person aged under 18.
 - (4) “Vulnerable adult” has the same meaning as it has for the time being in the Safeguarding and Clergy Discipline Measure 20--.”
- (2) This section applies to conduct occurring before the commencement of this section (as well as to conduct occurring afterwards). 25

6 Application to make complaint out of time: power to suspend

- (1) After section 36 of the Clergy Discipline Measure 2003 insert –
- “36A Suspension of priest or deacon pending determination of application to bring proceedings out of time**
- (1) This section applies where a complainant applies to the president of tribunals for permission under section 9 for disciplinary proceedings against a priest or deacon holding any preferment in a diocese to be instituted after the expiry of the period provided for by that section. 30
 - (2) The bishop of the diocese may, by notice in writing served on the priest or deacon, suspend the priest or deacon from exercising or performing without the leave of the bishop any right or duty of or incidental to the priest’s or deacon’s office. 35
 - (3) The bishop may not exercise the power under subsection (2) unless the bishop is satisfied that the suspension is necessary in all the circumstances of the case. 40
 - (4) Before exercising the power under subsection (2), the bishop must refer the matter to the registrar of the diocese for advice on –

- (a) whether or not the complainant has a proper interest in instituting the proceedings,
- (b) whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with this Measure, and
- (c) whether or not the suspension is necessary in all the circumstances of the case. 5
- (5) Having considered a matter referred under subsection (4), the registrar must send a written report to the bishop setting out the registrar’s advice; and the bishop must, in deciding whether to exercise the power, have regard to the registrar’s report. 10
- (6) The bishop may at any time, by notice in writing served on the priest or deacon, revoke the notice of suspension under subsection (2).
- (7) Where a notice of suspension is served under subsection (2) and has not been revoked under subsection (6), the suspension continues until –
- (a) the expiry of the period of three months following service of the notice, or
- (b) if the application for permission is determined before the expiry of that period, the time determined in accordance with subsection (8) or (10) (as the case may be). 15
- (8) If the application for permission is granted – 20
- (a) section 36(1), in its application to the complaint, has effect as if the words from “Provided that” to the end were omitted, and
- (b) the suspension continues until whichever is the first of the events mentioned in subsection (9) to occur.
- (9) Those events are – 25
- (a) the expiry of the period of 14 days beginning with the day on which the disciplinary proceedings are instituted;
- (b) the expiry of the period within which permission was given for the proceedings to be instituted (without them having been instituted); 30
- (c) the service of a notice of suspension under section 36(1) on the priest or deacon.
- (10) If the application for permission is refused, the suspension ends with the refusal.
- (11) If the application for permission is not determined before the end of the period mentioned in subsection (7)(a), a further notice of suspension under subsection (2) may be served; and – 35
- (a) subsections (7) to (10) and this subsection apply in relation to the further suspension as they applied to the earlier suspension or suspensions, but
- (b) subsection (4) does not apply in relation to the power to give the further notice. 40
- (12) Subsections (4) to (6) of section 36 apply in relation to a notice of suspension under subsection (2) of this section as they apply in relation to a notice of suspension under subsection (1) of that section.” 45

(2) After section 37 of the Clergy Discipline Measure 2003 insert –

“37A Suspension of bishop or archbishop pending determination of application to bring proceedings out of time

- (1) This section applies where a complainant applies to the president of tribunals for permission under section 9 for disciplinary proceedings against a bishop or archbishop to be instituted after the expiry of the period provided for by that section. 5
- (2) Where the application relates to a bishop, the archbishop of the province in which the bishop holds office may, with the consent of the two most senior diocesan bishops in that province, by notice in writing suspend the bishop from exercising any right or duty of or incidental to the bishop’s office. 10
- (3) Where the application relates to an archbishop, the other archbishop may, with the consent of the two most senior diocesan bishops in the province of the other archbishop, by notice in writing suspend the archbishop from exercising any right or duty of or incidental to the archbishop’s office. 15
- (4) The archbishop may not exercise the power under subsection (2) or (3) unless the archbishop is satisfied that the suspension is necessary in all the circumstances of the case. 20
- (5) Before exercising the power under subsection (2) or (3), the archbishop must refer the matter to the registrar of the province for advice on –
- (a) whether or not the complainant has a proper interest in instituting the proceedings,
 - (b) whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with this Measure, and 25
 - (c) whether or not the suspension is necessary in all the circumstances of the case.
- (6) Having considered a matter referred under subsection (5), the registrar must send a written report to the archbishop setting out the registrar’s advice; and the archbishop must, in deciding whether to exercise the power, have regard to the registrar’s report. 30
- (7) The archbishop may at any time, by notice in writing served on the bishop or other archbishop (as the case may be), revoke the notice of suspension under subsection (2) or (3). 35
- (8) Subsections (7) to (11) of section 36A apply in relation to a notice of suspension under subsection (2) or (3) of this section as they apply in relation to a notice of suspension under subsection (2) of that section, but as if –
- (a) the reference in subsection (7) to subsection (6) of section 36A were a reference to subsection (7) of this section, 40
 - (b) the reference in subsection (8) to section 36(1) were a reference to section 37(1), and
 - (c) the reference in subsection (11)(b) to subsection (4) of section 36A were a reference to subsection (5) of this section. 45
- (9) Subsections (3) and (4) of section 37, and subsection (6) of that section so far as relating to section 36(6), apply in relation to a notice of

suspension under subsection (2) or (3) of this section as they apply in relation to a notice of suspension under subsection (1) of section 37.

(10) In this section, “bishop” has the same meaning as in section 37.”

- (3) This section applies to conduct occurring before the commencement of this section (as well as to conduct occurring afterwards). 5

7 Registrar of tribunals: delegation of functions

- (1) In section 5 of the Clergy Discipline Measure 2003 (registrar of tribunals), in subsection (7), after “registrar of tribunals for the other province” insert “or, where a person has been selected under subsection (8), that person”.
- (2) After that subsection insert – 10
- “(8) The registrar of tribunals for a province –
- (a) may select a person to perform the duties of the registrar in the circumstances mentioned in subsection (7), but
- (b) may not do so without having obtained the written approval of the president of tribunals.” 15

Final provisions

8 Short title, commencement and extent

- (1) This Measure may be cited as the Safeguarding and Clergy Discipline Measure 20--.
- (2) This section comes into force on the day on which this Measure is passed. 20
- (3) The preceding provisions of this Measure come into force on such day as the Archbishops of Canterbury and York may by order jointly appoint; and different days may be appointed for different purposes.
- (4) The Archbishops of Canterbury and York may by order jointly make transitional, transitory or saving provision in connection with the commencement of a provision of this Measure. 25
- (5) The power to make an order under subsection (3) or (4) is exercisable by statutory instrument; and the Statutory Instruments Act 1946 applies as if the order had been made by a Minister of the Crown and as if this Measure were an Act of Parliament. 30
- (6) This Measure extends to the whole of the provinces of Canterbury and York, except the Channel Islands and the Isle of Man (but see subsections (7) and (8)).
- (7) This Measure may be applied to the Channel Islands, or either of them, in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957. 35
- (8) If an Act of Tynwald or an instrument made under an Act of Tynwald so provides, this Measure extends to the Isle of Man subject to such exceptions, adaptations or modifications as are specified.