

GENERAL SYNOD**THE DRAFT CLERGY DISCIPLINE (BAILIWICK OF GUERNSEY)
ORDER 2006****SCHEME FOR APPLYING
THE CLERGY DISCIPLINE MEASURE 2003 AND
THE CHURCH OF ENGLAND (LEGAL AID) MEASURE 1994
TO THE ISLAND AND BAILIWICK OF GUERNSEY
IN ACCORDANCE WITH THE
CHANNEL ISLANDS (CHURCH LEGISLATION) MEASURES
1931 AND 1957****Explanatory Memorandum****Introduction**

1. The Clergy Discipline Measure 2003 ('the CDM') received the Royal Assent in July 2003 and came fully in to force on the 1st January 2006. It provides a new structure for dealing efficiently and fairly with formal complaints of misconduct against members of the clergy (except in relation to matters involving doctrine, ritual or ceremonial, which will continue to be governed by the Ecclesiastical Jurisdiction Measure 1963).
2. The Church of England (Legal Aid) Measure 1994 ('the Legal Aid Measure') was amended by s.44(5) of the CDM to provide that the Church's legal aid may be made available to respondents in disciplinary proceedings brought under the Clergy Discipline Measure.
3. Although the Channel Islands falls within the jurisdiction of the Bishop of Winchester and are in the province of Canterbury, the CDM and the Legal Aid Measure do not automatically apply to the Islands. Acts of Parliament do not apply to the Channel Islands save in very limited and exceptional cases, and the same principle applies to Measures of the General Synod which have the force and effect of Acts of Parliament when given Royal Assent.

Procedures for extending Measures to the Channel Islands

4. By the Channel Islands (Church Legislation) Measure 1931 and 1957, if a Measure contains an express provision that it may be applied to the Islands, and if the Bishop of Winchester concludes that it ought to be so applied, with or without variations, he may prepare a draft scheme for that purpose in consultation with the Deanery Synod of the Island concerned. Before any such scheme is finally settled particulars of what is proposed must be sent to the Lord Chancellor so that they may be communicated to the States of the

Island concerned (i.e. the Island parliament) for their views to be ascertained. When a scheme has been finally settled the Bishop of Winchester presents it to the General Synod, which may approve or reject it by resolution, without the power to amend it.

5. If a scheme is approved by the General Synod, it is forwarded to the Lord Chancellor for submission to Her Majesty in Council, who is invited to make an Order confirming the scheme and directing that the relevant Measure shall apply to the Island concerned in accordance with the scheme.

6. Section 48(3) of the CDM and section 6 of the Legal Aid Measure provide respectively that those Measures may be applied to the Channel Islands, or either of them, in accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957.

7. In accordance with the Channel Islands (Church Legislation) Measures 1931 and 1957 the Bishop of Winchester has settled a draft scheme to apply the CDM to the Island and Bailiwick of Guernsey and its dependencies, and to provide that the church's legal aid may be made available in respect of proceedings under the CDM instituted in Guernsey.

Key principles underlying the draft scheme for Guernsey

8. The following key principles have been followed in preparing the draft scheme for Guernsey:

- The Bishop, by virtue of his office and consecration is required to administer discipline.
- All concerned (whether clergy accused of misconduct, complainants, the Bishop, the Church or society in general) should have under the Guernsey system a disciplinary process which is as efficient and as fair for dealing with complaints of misconduct as in England.
- The scheme ought to apply the CDM with as little departure as possible from the provisions as they apply in England, whilst recognising the particular circumstances of Guernsey and its independence from Westminster.
- In accordance with the constitutional position in the Islands, residents of Guernsey should not be required to defend themselves at a court or tribunal outside Guernsey, and consequently allegations of misconduct by clergy in Guernsey should be adjudicated upon by a body specially constituted for the Bailiwick.
- A tribunal constituted for the Bailiwick of Guernsey ought to have some appreciation of local circumstances, but clergy holding office in the

Bailiwick ought neither to judge, nor to be judged by, other Guernsey clergy.

Modifications to the CDM proposed by the Scheme

9. In addition to various technical modifications, the principal variations which the scheme will make to the application of the CDM in Guernsey will be as follows:

- Tribunals will be drawn from a deanery panel comprising a Panel Chairman and four other appropriately qualified lawyers, ten persons in Holy Orders and ten lay persons, each nominated by the Dean of Guernsey after consulting the Bishop of Winchester and the Guernsey Deanery Synod Standing Committee.
- Tribunals will consist of one of the lawyers (who will chair the tribunal), two clergy and two of the laity (as in England), each drawn from the deanery panel. At least one member, but not more than two members, of every tribunal will have to be resident in the Bailiwick, but where the respondent is from Guernsey the resident member or members of the tribunal must not be in Holy Orders.
- Appeals will lie, not to the Arches Court of Canterbury, but to a Commission appointed from an appellate panel established by the Dean of the Arches following consultation with the Dean of Guernsey. The Commissioners hearing the appeal will again comprise one lawyer, two persons in Holy Orders and two lay persons. One of its members will have to be resident in the Bailiwick and its proceedings will be conducted in the Bailiwick.
- The Panel Chairman, referred to above, in addition to acting as the chairman of any tribunal where in his or her opinion an important point of law or principle is involved, will be responsible for some of the functions which, in England, are undertaken by the President of Tribunals. These will include extending the time for making a complaint and deciding whether there is a case to answer in the course of a formal investigation; but functions in relation to reviewing decisions of the Bishop or in connection with the Archbishops' list will be exercisable by the President.
- There are no PCCs in Guernsey, hence no mention is made of them in the provision (s.10) regarding entitlement to make a complaint.
- The report for the Bishop at preliminary scrutiny stage will be prepared by the registrar of the Ecclesiastical Court of Guernsey, in place of the diocesan registrar in Winchester. The Dean of Guernsey will be notified when a complaint is made and will be kept informed at various stages of the procedure.

- The Clergy Discipline Commission will have no statutory role in relation to the Bailiwick, but all persons exercising functions under the CDM as applied to Guernsey will be required to have regard to codes of practice, general advice and guidance prepared by the Commission - subject to any adaptations or modifications made by the Deanery Synod Standing Committee and approved by the Deanery Synod.

Legal Aid

10. The Bishop of Winchester has concluded that Guernsey clergy accused of misconduct should have access to legal aid to the same extent as clergy in England. Accordingly, clause 2 of the draft scheme applies the Legal Aid Measure to Guernsey with appropriate modifications in respect of proceedings for misconduct under the CDM. This would make legal aid available not only in respect of any tribunal hearing, but also in proceedings being dealt with by the Bishop, and on appeal.

Consultation

11. As well as consulting the Deanery Synod of Guernsey and the States of Guernsey in accordance with the Channel Islands (Church Legislation) Measure 1931 and 1957, the Bishop of Winchester in preparing the draft scheme has worked closely with Her Majesty's Comptroller of Guernsey, and has also consulted the Clergy Discipline Commission (including the President of Tribunals), the Dean of the Arches, the Dean of Guernsey and the Legal Office of the National Church Institutions.

12. The Scheme was approved by the Guernsey Deanery Synod on the 30th November 2005 and by the States of Guernsey on 29th March 2006.

Procedure

13. The Bishop of Winchester will present the draft Order to the General Synod and move that it be approved. If approved, the draft Order will be forwarded for submission to Her Majesty in Council for confirmation.

Church House
London SW1P 3NZ

June 2006

Published by the General Synod of the Church of England and on sale at the Church House Bookshop, 31 Great Smith Street, London SW1P 3BN

50p