

GENERAL SYNOD

DRAFT AMENDING CANON NO. 40

REPORT OF THE REVISION COMMITTEE

- Chair:** The Ven Luke Miller, Archdeacon of London (London)
- Ex officio members
(Steering Committee):** The Rt Revd David Walker (Bishop of Manchester) (Chair)
Canon Shayne Ardron (Leicester)
The Revd Mark Broomhead (Derby)
Sr Catherine Harvey (Religious Communities)
Fr Thomas Seville (Religious Communities)
- Appointed members:** Sr Anita Cook (Religious Communities)
The Revd Sally Hitchiner (London)
Mrs Jacqueline Stamper (Blackburn)
The Revd Stephen Trott (Peterborough)
Mr Ian Yemm (Bristol)

References in this report to “the Committee” are references to the Revision Committee.

Unless otherwise indicated, references to paragraphs of the Amending Canon are references to those paragraphs as numbered in the Canon as originally introduced. Where paragraph numbers have changed this is indicated.

1. Draft Amending Canon No. 40 (GS 2103) received first consideration at the July 2018 group of sessions. It makes provision for religious communities in the Church of England.
2. Explanations of the provisions of the Canon were contained in the explanatory memorandum (GS 2103X).
3. The Committee met on one occasion and completed its remaining business by correspondence under Standing Order 56(4).
4. The Committee received submissions from one member of the Synod, who did not exercise his right under Standing Order 55 to attend the meeting of the Committee and speak to his proposals. Additional submission were received from three members of religious communities.
5. The Appendix contains a summary of the amendments considered by the Committee as well as the Committee’s decision on each.

Paragraph 1 – inserting New Canon DA 1 Of Religious Communities

Submissions of a general nature

6. **Sister Victoria Mary SPB** endorsed the proposal to give formal recognition to religious communities within the Church of England and the importance of safeguarding children and vulnerable adults.

7. She proposed that more should be said in the Canon about the significance of religious life and its place in the Church, including reference to “the preservation of the proper freedom of each community to follow Christ under the guidance of the Holy Spirit in accordance with the gifts and call it has received”. She also proposed that something be included “concerning the diversity of religious life and the provision of a stable foundation for maintaining order and discipline of the tradition”.
8. **Brother Bernard OC**, as prior of a contemplative order, raised concerns that religious life was envisaged by the Canon as being based on “activism and utility”. He pointed out that prayer and contemplation “is an end in itself and not just a ‘utility’”; and that “a ‘community’ is a ‘way of living the religious life’ and can be without particular obvious tangible ‘values’. Not simply because it benefits ‘ministry’.” He added that many traditional Anglican orders were mixed and were (and are) both active and contemplative.
9. The Steering Committee proposed, in response to these submissions and in the light of similar concerns that had been raised by members of religious communities and others, that an introductory paragraph should be added to the new Canon DA 1 so that it contained a short statement about the nature of the religious life.
10. The Revision Committee noted that while introductory statements were not generally used in legislation nowadays, there were already Canons which included statements of this sort, for example Canon B 30 (Of Holy Matrimony) and Canon B 25 (Of the sign of the cross in baptism). The Committee accepted the Steering Committee’s proposal and agreed to insert what is now paragraph 1 of the new Canon DA 1.
11. **Sister Helen Julian CSF** questioned the absence in the new Canon DA 1 itself of a distinction between “recognised” and “acknowledged” communities and was not convinced that this was helpful. While recognising that the two types of community would need to be addressed and provided for differently in the Regulations and guidance that were to be made under the new Canon DA 1, Sister Helen Julian submitted that “it would make sense to at least note that they exist on the face of the Canon”.
12. Sister Helen Julian also raised concerns about misunderstanding, and misuse, of the term “community” in this context.
13. The Committee noted the following definition of “recognised” and “acknowledged” communities contained in the new draft *Handbook of the Religious Life* that was being prepared by the Advisory Council for Relations between Bishops and Religious Communities (‘the Advisory Council’):

The Advisory Council is able to register two types of Religious Communities.

- (a) The **Recognised** Communities are those in which the members make vows or promises either of stability, conversion of life and obedience (in the Benedictine tradition) or poverty, chastity and obedience (the evangelical counsels). The members share in a common life and live together, though not necessarily all in one place and have a Rule and Constitutions which provide for the ordering of the life of the Community.
- (b) The **Acknowledged** Communities vary in their practice and lifestyle. In most cases the members are dispersed, with opportunities provided for meeting together. In some Communities, all the members are single, with a vow of celibacy, whilst in others members may be single or married. Some members of what is otherwise a dispersed Community may have a shared life in one place. A Community initially established to minister in a particular place, might consist of married members and

their families, as well as single members, with all living together in one house, or in several properties near to one another. There are many possibilities and the Advisory Council accepts this fluidity and variety and seeks to encourage this growth in Community life in the Church.

The distinction between the Recognised and Acknowledged Communities is necessary in order to honour the single or unmarried state and the sharing of a common life under vows, which have always been characteristic features of the Religious Life and also because the professed members of the Recognised Communities elect representatives to the General Synod.

14. The Committee considered that the introduction of new paragraph 1 in Canon DA 1 adequately distinguished between different expressions of the call to religious life. It did not consider it necessary or desirable to go further by formally distinguishing between recognised and acknowledged communities in the Canon itself. The details of the relevant distinctions – which were signalled by the new introductory paragraph – would be addressed in the Regulations to be made under the Canon.
15. **Sister Victoria Mary** asked that consideration be given to mentioning the Advisory Council, its status, composition and function, in the Canon.
16. The Committee noted that it would not be appropriate to do that as the Advisory Council is constituted as a Committee of the House of Bishops under the standing orders of the House and derives its authority from the House.
17. **Sister Victoria Mary** asked that consideration be given to mentioning the role of episcopal visitors in the Canon.
18. The Committee noted that paragraph 3(2)(a) of new Canon DA 1 enabled Regulations made under the Canon to specify conditions relating to governance. The Committee was therefore content to leave provision relating to powers of visitation to be dealt with in the Regulations.
19. Members of the Committee raised the question whether conditions relating to compliance with charity law should be provided for in the Canon. The Committee accepted the advice of the Legal Office that if a religious community was a charity (which not all religious communities were) it would automatically be obliged to comply with charity law and that it would be unwise to duplicate provisions of charity law in canon law.

Submissions of a specific nature

20. **Mr Clive Scowen (London)** proposed that it should be made clear that communities taking the form of mission initiatives authorised by bishops' mission orders under Part 7 of the Mission and Pastoral Measure 2011 are not within the scope of new Canon DA 1.
21. The Committee was advised that it had not been intended that the same community should be subject both to the new Canon DA 1 and the Regulations and guidance it provided for, and to the statutory regime for mission initiatives established under bishops' mission orders. It would therefore be possible to amend the Canon to exclude that possibility.
22. However, the Committee considered that there could be circumstances where a mission initiative established by a bishop's mission order was in the process of becoming a religious community and that there might be a point in that process where it should temporarily be subject to both regimes. The Committee also recognised that it was not possible to foresee all the possibilities that might arise and did not wish to foreclose the possibility of a religious community also being covered by a bishop's mission order in other circumstances; for example, if a religious community was asked by a bishop to run a mission initiative.

23. The Committee accordingly decided not to exclude mission initiatives authorised by bishops' mission orders from the scope of the Canon. However, guidance issued by the House of Bishops under the Canon could explain that it should not normally be the case that a community would be simultaneously subject to both regimes.
24. **Mr Scowen** pointed out that all existing religious communities – however long they had been established – would need to apply for a declaration under the new Canon in order to be religious communities in the Church of England. He noted that some communities had declined in size as a result of their members aging and the want of new vocations. He wished to ensure that established religious communities which now had few members should be capable of being declared religious communities in the Church of England under the new Canon. He therefore proposed that the provision made by **paragraph 3(2)(e) of the new Canon DA 1** – which was concerned with the number of members required for a community to be eligible for a declaration – should apply only to newly-formed communities.
25. The Committee noted that paragraph 3(1) of new Canon DA 1 requires the House of Bishops to make Regulations specifying conditions that have to be met by a community to be eligible for a declaration that it is a religious community in the Church of England. Paragraph 3(2) – which Mr Scowen was concerned about – sets out some matters in respect of which the Regulations may, in particular, specify conditions. One of those matters is the minimum number of members required for a community to be eligible for a declaration.
26. Members of the Committee shared some of Mr Scowen's concerns that the regime established by the Canon should not be seen as a threat to existing religious communities that were facing a decline in numbers. However, the Committee was of the view that this concern could be met without amendment of the draft Amending Canon. That was because the relevant provision does not say that each community must have a specified minimum number of members in order to be eligible for a declaration; only that the Regulations may specify conditions relating to the minimum number of members required to be eligible. It would be possible for the Regulations to distinguish between religious communities which existed before the enactment of the Canon and those established after its enactment, specifying different conditions in each case. It was not therefore necessary to amend the Canon to preserve the position of established religious communities which have become small in number
27. The Committee accordingly recommends that the Regulations to be made under the Canon should distinguish between established communities and new communities when it comes to imposing conditions as to minimum numbers.
28. **Sister Helen Julian** raised a query on **paragraph 7(2) of new Canon DA 1** which enables Regulations made under the Canon to confer a discretion.
29. The Committee was advised that it was necessary for the Regulations to be able to confer a discretion because of the discretionary nature of the power given to the House of Bishops to make a declaration that a community is a religious community in the Church of England. There could be other discretionary powers to be exercised under Regulations, for example by the visitor of a community.
30. The Committee noted that Sister Helen Julian was particularly concerned about the possibility – mentioned in paragraph 17 of the Explanatory Memorandum – that Regulations might confer a discretion on a person to decide whether to approve changes to a community's constitution. She pointed out that her community is international in nature and that its constitution therefore relates to more than one Church within the Anglican Communion.

31. The Committee noted that new Canon DA 1 made provision for a community to be declared “to be a religious community in the Church of England”. A community was either a religious community in the Church of England or it was not. There was no possibility of enacting a supra-national canon providing for religious communities in the Anglican Communion.
32. The Committee noted that clergy who were members of other Churches within the Anglican Communion were bound, while in England, by the Canons of the Church of England and the legislation relating to clergy discipline. The same would need to be the case for religious communities which operate within the Church of England and their members.
33. The Committee noted that paragraph 3(3) of new Canon DA 1 expressly enabled Regulations made under the Canon to specify conditions as to the procedure a community must follow in order to amend its constitution or other governing document. Without such provision it would be possible for a community to change its constitution in significant ways after it had been declared a religious community in the Church of England without any oversight of that process being exercised by anyone on behalf of the Church of England, for example the Advisory Council or a visitor. The Committee accepted that this was a necessary condition and that any community organised on an international basis which wished to be a religious community in the Church of England would have to be subject to the Regulations.
34. **Sister Helen Julian** questioned whether, under **paragraph 7(4) of new Canon DA 1**, the Business Committee was the right body to determine whether Regulations needed to be debated by the General Synod and whether this side-lined the Advisory Council.
35. The Committee noted that paragraph 7(4) provided for use of the procedure contained in the Standing Orders of the General Synod under which certain instruments can be deemed to have been approved by the Synod without debate; and that the Standing Orders provided for decisions as to whether that procedure was to be used to be taken by the Business Committee. The Committee was advised that in practice, the procedure was used where the Business Committee took the view that the legislation in question was of a minor and non-controversial nature, not raising significant policy questions.
36. The Committee considered that the Business Committee, which comprises a membership that is intended to reflect the breadth of the Synod’s membership, was well-placed to take such decisions about the synodical procedure that was to be used. If the Business Committee did decide that the procedure for deeming was to be followed, an instrument would nevertheless be debated if any member of the Synod gave due notice that the member wished a debate to take place.
37. The Committee was accordingly satisfied that the Business Committee was the right body to decide on the Synodical procedure to be followed for the approval of Regulations made under new Canon DA 1.
38. **Mr Scowen** proposed that the power conferred on the House of Bishops by **paragraph 8 of the new Canon DA 1** to issue guidance on religious communities should be subject to an express requirement for prior consultation with existing religious communities. He did so on the basis that the imposition of a duty on members of religious communities, and other persons exercising functions in relation to them, to have regard to the guidance meant that it would have a significant impact on religious communities.
39. The Committee noted that in practice, the powers conferred on the House of Bishops by new Canon DA 1 to issue guidance (and to make Regulations) would be exercised by the Advisory Council, which was now constituted as a committee of the House. A majority of its members

were representatives of religious communities. The guidance would therefore be issued with very significant input from religious communities.

40. The Committee decided not to amend the Canon to impose an express duty on the House of Bishops to consult religious communities. Instead, it recommends that the terms of reference of the Advisory Council should be amended to make reference to the need for appropriate consultation when it is exercising its functions in a way that will have an impact on religious communities.

Paragraph 2

41. No proposals for the amendment of paragraph 2 were received and the Committee did not make any amendments.

Paragraph 3

42. No proposals for the amendment of paragraph 3 were received and the Committee did not make any amendments.

Paragraph 4

43. No proposals for the amendment of paragraph 4 were received and the Committee did not make any amendments.

New paragraphs (now paragraphs 5 and 6)

44. The Committee noted that only members of recognised religious communities were electors for the purposes of the provisions of the Canons and the Church Representation Rules which provide for the election of representatives of religious communities to, respectively, the Convocations and the House of Laity. It was not currently proposed to change that position.
45. The Committee noted that paragraph 2(2) of the new Canon DA 1 (inserted in the Canons by paragraph 1 of the Amending Canon) provided a general definition of “religious community” for the purposes of the Canons as a whole. Without more, that definition would result in acknowledged communities being inadvertently brought within the electoral constituency for recognised communities.
46. The Committee accordingly agreed to the insertion of new paragraphs 5 and 6 which preserve the status quo by providing for the House of Bishops to designate the religious communities whose members form the relevant electoral constituency. It is envisaged that this function will be performed on behalf of the House by the Advisory Council (as is currently the case).
47. The Committee asked the Revision Committee for the Church of England (Miscellaneous Provisions) (No. 2) Measure to make equivalent amendments to the Church Representation Rules in relation to elections to the House of Laity. The Revision Committee for the Measure has agreed to do that (see clause 1(4) of that Measure).

Luke Miller
Chair of the Committee

December 2018

Summary of proposed amendments and the Committee's decisions

Paragraph in original draft Canon (GS 2103)	Paragraph in draft Canon as revised (GS2103A)	Name	Summary of proposal	Committee's decision
1	1	Sr Victoria Mary, Br Bernard	Insert statement about the nature of the religious life	Accepted
1	1	Sr Victoria Mary	Distinguish in Canon between 'recognised' and 'acknowledged' communities	Rejected
1	1	Sr Victoria Mary	Include reference in Canon to visitor	Rejected
1	1	Clive Scowen	Exclude mission initiatives from scope of Canon	Rejected
1	1	Clive Scowen	Disapply provision as to minimum numbers in case of established communities	Rejected
1	1	Clive Scowen	Impose duty on House of Bishops to consult before issuing guidance	Rejected
2	2	--	--	--
3	3	--	--	--
4	4	--	--	--
--	5	Committee	Provide for House of Bishops to designate communities for electoral purposes	Accepted
--	6	Committee	Provide for House of Bishops to designate communities for electoral purposes	Accepted