

GENERAL SYNOD
CLERGY CONDUCT MEASURE
Explanatory Notes

The draft Clergy Conduct Measure amends the law on the regulation of the conduct of clergy in the Church of England by repealing the Clergy Discipline Measure 2003 and replacing it with a new system for the investigation and determination of complaints, establishing three different procedures depending on whether the complaint is a grievance, an allegation of misconduct, or an allegation of serious misconduct. Various other amendments have also been made to improve the overall operation of the Church's disciplinary structures.

BACKGROUND

1. The draft Clergy Conduct Measure ("**CCM**") sets out the statutory framework for regulating the conduct of clergy in the Church of England. It provides for the replacement of the Clergy Discipline Measure 2003 ("**CDM 2003**").
2. The first major step in the reform of the CDM was the Church's involvement in the Independent Inquiry into Child Sexual Abuse ("**IICSA**"). Arising out of that, a House of Bishops' Working Group, chaired by the then Bishop at Lambeth, the Rt Revd Tim Thornton, was set up to examine improvements to the CDM in the context of safeguarding allegations. The recommendation of that group went further and proposed to the House of Bishops in 2020 that the CDM be replaced in full.
3. The Lambeth Working Group, along with others, identified that there was a pressing need for the creation of a system that could deal with different levels of misconduct and behaviour.
4. At the July 2021 group of sessions General Synod voted to take note of the final report of the Lambeth Working Group which recommended the creation of a smaller more focussed implementation group to bring legislative proposals back to General Synod.
5. In July 2022 Synod endorsed the legislative proposals contained in the Implementation's Group's report entitled '*Under Authority: Revisited*' and passed a motion requesting that the Archbishops' Council introduce legislation to give effect to the proposals.

6. This draft Measure has been produced, as requested by Synod, to reflect the legislative proposals as approved by Synod in 2022. The Revision process under the Synod's Standing Orders allows the draft Measure to be amended as required. Following First Consideration, Synod members may table amendments to any provision in the draft Measure for consideration by the Revision Committee and then by Synod in February 2024.

OVERVIEW OF CHANGES

7. The principal feature of the new Measure is that complaints will be categorised as either a grievance, misconduct, or serious misconduct.
8. Grievances will be dealt with at a local level and in a relatively informal way without the imposition of any penalty.
9. Complaints of misconduct will be investigated by a case assessor, operating regionally across the church, but from outside the diocese where the complaint arose. In a case where a finding of misconduct (not amounting to serious misconduct) is made, the bishop will impose a penalty, but will not be permitted to remove the cleric from any office, revoke the cleric's licence, or prohibit the cleric from ministry.
10. Complaints of serious misconduct will be referred by the bishop to a central body of lawyers and investigators located within the NCIs. After an investigation the complaint will be subject to a report to the President of Tribunals who will decide whether the complaint should be determined by a bishop's disciplinary tribunal (priests and deacons) or the Vicar-General's Court (bishops and archbishops).
11. Other key changes from the CDM include:
 - a. The creation of a new Investigation and Tribunals Team (ITT) to investigate and oversee cases of serious misconduct and to give general advice and guidance about the Measure (see clause 14).
 - b. A new procedure for protected parties, where a child or a person who lacks capacity or has a disability wishes to bring a complaint. In such cases it will be possible to appoint a litigation friend to conduct the complaint in the place of the child or person lacking capacity or having a disability (see clause 17);
 - c. Clerics will be able to self-refer themselves into the system in respect of their own conduct (see clause 18);
 - d. The abolition of a decision to take 'no further action' as an available outcome to a complaint.

- e. The panel of either a bishop's disciplinary tribunal or the Vicar General's Court will now comprise three members, down from the current five (see clauses 27 and 28);
- f. The introduction of a power to make a restraint order against a person who has brought vexatious complaints (see clauses 30 and 31)
- g. The introduction of a power to make an interim restriction order, prohibiting a cleric for carrying out certain specified functions in the order, as opposed to imposing a full suspension from carrying out *any* functions as a cleric (see clause 33).
- h. The introduction of a threshold test of 'necessity' prior being able to suspend a respondent (see clause 34).
- i. New provision for administrative sanctions, which are not a penalty, for lower-level misconduct (see clause 35).
- j. The abolition of 'penalty by consent' where a respondent admits misconduct. This implements an IICSA recommendation (see clause 35).
- k. The re-introduction of a power to depose a clerk from Holy Orders following a finding of misconduct that does not involve a question of doctrine, ritual or ceremony. This implements an IICSA recommendation (see clause 39).

RULES

12. The draft Measure establishes the framework of the system, and provides for rules to be made which will contain further operational details. These rules will be secondary legislation made under this Measure and pursuant to section 83 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. The 2018 Measure provides for the rules to be made by the Rule Committee and laid before Synod for approval.
13. It is not possible at this stage to provide the rules in draft form to Synod, as the draft system contained in this Measure may change as a result of amendments at the Revision Stage. At the end of these explanatory notes an illustrative outline of the structure that the rules will take has been provided to assist members. As the draft Measure progresses through Synod more detail will be added to this outline.

PROCEDURAL STAGES

14. Standing Order 48(1) provides for Measures and Canons to be considered by the General Synod on the following successive stages

- **First Consideration (see SOs 51 and 52)**
 - Revision Committee (see SOs 54 to 57)
 - Revision (see SOs 53 and 58 to 60)
 - Final Drafting (see SO 61)
 - Final Approval (see SO 64).

15. The draft Measure is being considered by the General Synod at the July 2023 group of sessions on the **First Consideration Stage**.

16. The next stage will be the Revision Committee stage. Members who wish to send proposals for amendment for consideration by the Revision Committee must do so in writing to revisioncommittee@churchofengland.org not later than 5:30 pm on the 8th of September 2023.

17. The Measure is expected to return to the Synod for the Revision Stage in February 2024 with the Final Drafting and Final Approval stages being taken in July 2024.

NOTES ON CLAUSES

Clause 1 Duty to have regard to purpose of disciplinary system etc

18. Clause 1 is an overarching provision that sets out that every person who exercises a function for the purposes of the Measure must have due regard to the purpose of the clergy conduct system and also to the general role of bishops and archbishops in administering discipline (reflecting the role of bishops as set out in the Ordinal and the Canons (see Canon C18.7)).

Clause 2 Jurisdiction on clergy conduct

19. Clause 2(1) sets out that the Measure confers a jurisdiction regulating the conduct of a priest, deacon, bishop or archbishop.

20. Clause 2(2) maintains the current position that where a case concerns a question of doctrine, ritual, or ceremonial, the matter is to be dealt with under the procedure contained in the Ecclesiastical Jurisdiction Measure 1963.

Clause 3 Meaning of “misconduct”

21. The current grounds of misconduct in the CDM have been retained, with some amendments to the drafting.

22. Clause 3(1) sets out four grounds for which a complaint of misconduct may be made under the Measure.
- a. Clause 3(1)(a) provides that a breach of ecclesiastical law is to amount to misconduct. This includes an act or omission.
 - b. Clause 3(1)(b) provides that a failure to comply with a requirement imposed by a Code issued under section 5A of the Safeguarding and Clergy Discipline Measure 2016 continues to be misconduct.
 - c. Clause 3(1)(c) provides that neglect or inefficiency in the performance of a duty of ecclesiastical office continues to be misconduct.
 - d. Clause 3(1)(d) replaces the wording found in the CDM of “conduct unbecoming or inappropriate to the office and work of clerk in Holy Orders” with a redrafted formulation of ‘conduct which fails to meet the standards required of a clerk in Holy Orders.’
23. Clause 3(2) provides that, for the purposes of (d) above, the standards are to be found in particular (but not limited to) in the Ordinal, the Canons, and Acts of Convocation (for example, *The Guidelines for the Professional Conduct of the Clergy*).
24. Clauses 3(3) and (4) continue the current position that where the House of Bishops have declared that the constitution, policies, objectives, activities or public statements of a political party or organisation are incompatible with the Church’s teaching on equality of person or groups of different races, then membership, promotion, or an expression or solicitation of support for that party or organisation amounts to misconduct.
25. Clause 3(5) provides that holding lawful political opinions or undertaking lawful political activities cannot constitute misconduct for the purposes of clause 3(1)(d) (conduct which fails to meet the standards required of a clerk in Holy Orders.)
26. Clause 3(6) provides that the term ‘races’ in subsection (4) is to read with section 9 of the Equality Act 2010.
27. Clause 3(7) provides that any declaration previously made by the House of Bishops under the corresponding provisions of the CDM is to remain in force under this Measure. Presently the House of Bishops have made one declaration in relation to the British National Party and the National Front.

Clause 4 President and Deputy President of Tribunals

28. Clause 4(1) and (2) provides that the offices of President and Deputy President of Tribunals are to continue to exist and provides that they are to be appointed by the Appointments Committee of the Church of England on the recommendation of the Dean of the Arches.

29. Clause 4(3) sets out the qualification requirement for appointment as President or Deputy which are that the person currently holds or has held high judicial office or they hold, have held, or have the qualification for holding, the office of circuit judge. 'High judicial office' is defined in clause 64(2).

Clause 5 President and Deputy President: functions

30. Clause 5 sets out provisions relating to the functions of the President and Deputy.

31. Clause 5(1) provides that the President of Tribunals has such functions that are conferred on that person by this Measure or under this Measure (for example as set out in Rules or other secondary legislation) and by any other Measure.

32. Clause 5(2) provides that the President is entitled, should the President wish to, to act as Chair of a bishop's disciplinary tribunal.

33. Clause 5(3) requires the President to issue practice guidance in relation to the operation of tribunals.

34. Clause 5(4) provides that the President and Deputy President have a coterminous jurisdiction so that that, if the President is absent, or unable or unwilling to act, then the Deputy President must do so instead.

35. Clause 5(5) allows that the President or Deputy President may select a person who is eligible to be a Chair of a bishop's disciplinary tribunal to act in their place where they are unable or unwilling to act.

Clause 6 Registrar of Tribunals: continuation

36. Clause 6(1) provides that the current office of registrar of tribunals for each province under the CDM 2003 is to continue.

37. Clause 6(2) sets out that the appointment of each registrar is to be made by the archbishop of the relevant province after consultation with the President.

38. Clauses 6(3) – 6(8) set out the eligibility, retirement, resignation and termination requirements in relation to the registrars of tribunals.

Clause 7 Registrar of tribunals: functions

39. Clause 7(1) sets out that the functions of the registrar of tribunal for each province will be such as are conferred by rules.

40. Clause 7(2) provides for what happens in the event that a registrar of tribunals is unable or unwilling to act. In those cases, the functions must be carried out by either the registrar of tribunals for the other province, or a person selected under subsection 3 of this clause.

41. Clause 7(3) provides that the registrar of tribunals may select another person to act in their place but may not do so unless they have obtained the written approval of the President to Tribunals.

Clause 8 Clergy Conduct Commission: continuation

42. Clause 8 allows for the continuation of a Commission to oversee the general operation of the Measure and changes its name to the Clergy Conduct Commission.

43. Clauses 8(2) – (5) provides that the Commission is to consist of no more than 12 members, which include the President and Deputy President. The other members are to be appointed by the Appointments Committee and must include at least one member from each House of General Synod.

44. Clause 8(6) changes the current position that the President is automatically the Chair of the Commission and allows, should the Appointments Committee wish, for the Committee to appoint another member of the Commission as Chair.

45. Clause 8(7) is a standard provision that allows the Commission to regulate its own procedure subject to any provision made by or under this Measure.

Clause 9 Clergy Conduct Commission: functions

46. Clause 9(1) sets out that the three primary functions of the Commission are to

- a. give general advice to tribunals, courts and to bishops and archbishops on the penalties or other orders that would be appropriate to make;
- b. oversee the training and professional standards of person exercising functions within system. For example, the training and work of the lead and case assessors; and
- c. continue to give an annual report on its activities to the General Synod through the House of Bishops.

47. Clause 9(2) provides that the Commission will also have other such functions that are conferred on it by or under this or any other Measure.

48. Clauses 9(3) and (4) require the Commission to prepare general guidance for persons exercising functions under the Measure, which may then be amended or replaced. The guidance will be issued as a Code of Practice and before it is issued it must have the approval of the Dean of the Arches and Auditor and the President of Tribunals. The clause does not replicate the current provision in the CDM 2003 whereby the Code of Practice is laid before General Synod for approval with or without amendment.

Clause 10 Provincial panel: composition

49. Clause 10 requires the Clergy Conduct Commission to continue to maintain the list known as the 'provincial panel' of persons who are eligible to sit on tribunals and courts.
50. Clause 10(2) replicates the exact provisions of the CDM 2003 in respect of the nomination by the diocesan bishop of two lay persons and two clergy to the panel. A member of the laity must be resident in the diocese and on the electoral roll of a parish in the diocese or on the community roll of a cathedral in the diocese. A person in Holy Orders must be resident in the diocese and have served in Holy Orders for at least seven years. Before making a nomination the bishop must consult with the bishop's council (see clause 10(5)).
51. Clause 10(2)(a) expands the panel by including each diocesan chancellor as a person who may chair a tribunal.
52. Clause 10(2)(d) removes the current cap under the CDM 2003 of 10 nominations per province for those eligible to chair a tribunal and sets out the qualification requirements for appointment.
53. Clause 10(3) continues to allow the archbishop of each province to nominate for inclusion in the relevant panel up to five members of the laity and five persons in Holy Orders, each satisfying the same qualification criteria as if they had been nominated by a diocesan bishop.
54. Clause 10(4) requires a lay person nominated to be an actual communicant. Clause 64(1) defines 'actual communicant' by reference to Rule 83(2) of the Church Representation Rules.
55. Clause 10(6) provides that subsection (2)(d) operates to mean that the eligibility requirements for appointment to the provincial panel as a tribunal chair under this Measure are treated as a statutory provision for the purposes of 50 of the Tribunals, Courts and Enforcement Act 2007, which sets out the eligibility requirement for the appointment of certain secular judges.

Clause 11 Provincial Panel: period of inclusion

56. Clause 11 sets out the period for which a person nominated to the provincial panel serves.
57. Clause 11(1) provides that each person will initially serve for a period of six years.
58. Clause 11(2) provides that a lay person or member of the clergy (other than those eligible to act as a Chair) nominated either by a bishop or an archbishop is eligible

to be nominated for inclusion on the relevant panel for one further period of six years, which does not need to be consecutive to the previous term.

59. Clause 11(3) allows for those nominated to act as a Chair to be nominated for one or more further period of six years, each of which does not need to be consecutive to the previous term.

60. Under clause 11(4) if a person's inclusion on the panel comes to an end whilst they are a member of a court or tribunal which is hearing a complaint, either under this Measure or the CDM, that person continues on the panel until such time as the complaint has been determined.

61. Clause 11(5) sets out the procedure for filling a casual vacancy where a person has resigned from the panel or is no longer eligible to be a member.

Clause 12 Regional panel of assessors: composition

62. This clause makes new provision for the creation and maintenance of a regional panel of assessors who will have responsibility for the allocation of cases and investigation of complaints of misconduct which is not serious.

63. Clause 12(1) requires the archbishop of each province to group the dioceses in the province into regions and to issue a document which sets out the groupings.

64. Clause 12(2) sets out that the Clergy Conduct Commission must compile and maintain for each of the regions a panel of assessors.

65. Clause 12(3) provides that each regional panel must include one person nominated by the Clergy Conduct Commission on the recommendation of the Dean of the Arches and Auditor and, for each diocese in the region, up to two persons nominated by the bishop of that diocese.

66. Clause 12(4) provides that the person nominated by the Clergy Conduct Commission on the recommendation of the Dean of the Arches and Auditor is to act as the regional lead assessor for that region. The regional lead assessor will have responsibility for the allocation of complaints to the appropriate track.

67. Clauses 12(5) and (6) set out the eligibility requirements for nomination to the panel of assessors. The requirement is the same as for inclusion on a provincial panel, save that a clerk in Holy Orders must have been in orders for five years.

68. Clause 12(7) requires the bishop when making a nomination to the regional panel to have due regard to the Code of Practice issued by the Clergy Conduct Commission. The Code will set out the general experience and qualities required for exercising the functions of an assessor.

69. Clause 12(8) allows the archbishops to amend and re-issue the document which groups the diocese into regions within their respective province.

Clause 13 Regional panel of assessors: period for inclusion

70. This clause sets out the period for which a person nominated to the regional panel of assessors serves.

71. Clause 13(1) provides that a person nominated for inclusion on the panel of assessors serves an initial term of six years.

72. Clause 13(2) allows for that initial term to be renewed for one further period of six years, which does not need to be consecutive to the previous term.

73. Clauses 13(3) and (4) set out what happens when an assessors' term come to an end whilst they are dealing with a complaint. An assessor who is investigating a complaint continues on the panel until the investigation is complete. In the case of a lead assessor, that person continues on the panel until the complaint has been allocated to the appropriate track under clause 21.

74. Clause 13(5) provides that the rules made under this Measure may provide that a person's inclusion on the panel of assessors depends upon the completion of specified training. The provision of training will be overseen by the Clergy Conduct Commission.

Clause 14 Investigation and Tribunals Team

75. This clause makes provision for the creation of an 'Investigation and Tribunal Team' ("ITT") to oversee cases of serious misconduct and to give general advice and guidance about the Measure.

76. Clause 14(1) requires the Chief Legal Adviser to the Archbishops' Council and the General Synod to designate one or more members of the Legal Office of the NCIs as members of the ITT.

77. Clause 14(2) sets out the general responsibilities of the ITT.

78. Clause 14(3) is a technical provision which provides that the work of the ITT has effect as if it were a function of Chief Legal Adviser and therefore enforceable through that person.

Clause 15 Complaint: proper interest

79. This clause sets out who may bring a complaint against a priest, deacon, bishop or archbishop, known as having a 'proper interest'.

80. Clause 15(2) provides that in the case of a priest or deacon the following persons have a proper interest:

- a. if the priest or deacon holds office in a parish—
 - i. a churchwarden of the parish, or
 - ii. a person nominated by the PCC at a duly convened meeting where at least two-thirds of the lay members are present and at least two-thirds of the lay members present vote for the complaint to be brought. The person nominated need not be a member of the PCC.
- b. the archdeacon in whose archdeaconry the priest or deacon holds a form of authority to exercise ministry or, if the person does not hold a form authority, is resident;
- c. the diocesan safeguarding officer of the diocese in which the priest or deacon either holds a form of authority to exercise ministry or, if the person does not hold a form authority, is resident;
- d. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- e. a person who experienced or witnessed the conduct alleged in the complaint.

81. Clause 15(3) provides that where the complaint is brought against a clerk in Holy Orders who serves in a cathedral then the complaint may be brought by:

- a. a person nominated by the Chapter of the Cathedral. The person nominated need not be a member of Chapter;
- b. the diocesan safeguarding officer of the diocese of which that cathedral is the cathedral;
- c. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- d. a person who experienced or witnessed the conduct alleged in the complaint.

82. Clause 15(4) provides that where the complaint is brought against a bishop, the following persons have a proper interest:

- a. in the case of a diocesan, suffragan or other bishop who has authority to exercise ministry in the diocese, a person nominated by the bishop's council of the diocese at a duly convened meeting where at least two-thirds of the members are present and at least two-thirds of the members present vote for the complaint to be brought. The person nominated does not need to be a member of the bishop's council
- b. the diocesan safeguarding officer of the diocese in which the bishop either holds a form of authority to exercise ministry or, if not holding authority to do so, is resident;
- c. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;

- d. a person who experienced or witnessed the conduct alleged in the complaint.

83. Clause 15(5) provides that where the complaint is brought against an archbishop the following persons have a proper interest:

- a. a person nominated by the bishop's council of the diocese of that archbishop at a duly convened meeting where at least two-thirds of the members are present and at least two-thirds of the members present vote for the complaint to be brought. The person nominated does not need to be a member of the bishop's council
- b. the diocesan safeguarding officer for the archbishop's diocese;
- c. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- d. a person who experienced or witnessed the conduct alleged in the complaint.

84. Clause 15(6) makes provision for an archdeacon to nominate another archdeacon to bring a complaint where the archdeacon is unable or unwilling to do so, for example because of a conflict of interest.

85. Clause 15(7) sets out that where an archdeacon nominates another archdeacon that must be done in writing and a copy of the record sent to the diocesan registry.

86. Clauses 15(8) and (9) define who is to be regarded as the 'national director of safeguarding' and a member of the 'national safeguarding team'.

Clause 16 Complaint: procedure

87. Clause 16 sets out the procedure for bringing a complaint.

88. Clause 16(1) allows for the procedural rules made under this Measure to set out the form that a complaint must be made in and the procedure which must be followed.

89. Clause 16(2) sets out that a complaint against a priest or deacon (subject to the exceptions set out below) must be made to the bishop of the diocese in which the priest or deacon held preferment (i.e. the diocese in which the priest or deacon held a form of authority to exercise ministry) at the time that the alleged conduct occurred, or if the priest or deacon did not hold preferment the diocese in which the priest or deacon was resident.

90. Likewise, clause 16(3) sets out that a complaint against a bishop must be made to the archbishop of the province in which the bishop held preferment at the time that the alleged conduct occurred, or if the bishop did not hold preferment at time, the diocese in which the priest or deacon was resident.

91. In either case, if the complaint alleges that the priest or deacon or bishop officiated as minister without authority then the complaint must be made to the bishop of the diocese (in the case of a priest or deacon) or the archbishop of the province (in the case of a bishop) in which the person is said to officiated without authority.
92. Clause 16(4) requires a complaint against an archbishop to be made to the President of Tribunals, who must notify the other archbishop. This changes the position under the CDM 2003 where a complaint against an archbishop is made to the other archbishop.
93. Clauses 16(5) to (7) sets out special modifications for certain clergy and provides that:
- a. a complaint against a chaplain of one of the armed forces of the Crown must be made to the Archbishop of Canterbury;
 - b. a complaint against a minister who has a licence to preach from an archbishop must be made to that archbishop;
 - c. a complaint against a minister who has a licence to preach from the University of Oxford or Cambridge must be made to the Archbishop of Canterbury.
94. The Measure applies equally to those clergy serving in royal peculiars.
95. Clause 16(8) provides that where a respondent falls within both one of the general provisions in (2) to (4) and one of the special provisions in (5) to (7), only the special provision will apply.
96. Clause 16(9) operates to prevent a complaint being made under this Measure against a cleric about the way they have performed a function under this Measure, without the prior permission of the President of Tribunals. For example, this provision would apply to a priest who acted as a case assessor on a complaint of misconduct or an archdeacon who brings a complaint.
97. Clause 16(10) confirms that where a cleric holds a licence from a bishop of the diocese that licence may not be terminated because of the cleric's misconduct otherwise than by a complaint being made under this Measure.
98. Clause 16(11) creates the term 'responsible bishop' which operates as a tag for future references in this Measure.
99. Clause 16(12) provides that where a complaint is made against an archbishop the functions of the responsible bishop are to be exercised by the President of Tribunals, except in so far as they are modified by the Rules. For example, the

rules may provide for pastoral support to be arranged not by the President of Tribunals but by another cleric.

Clause 17 Protected Parties

100. This is a new clause which sets out the procedure where a child or a person who lacks capacity or has a disability wishes to bring a complaint. In such cases the procedure allows for the appointment of a litigation friend to conduct the complaint in the place of the child or person lacking capacity or having a disability.

101. Clause 17(1) provides that a child may not bring a complaint, but where the child would otherwise have a proper interest (for example under clause 15(2)(e) above because they experienced the misconduct) then a person with parental responsibility (which under clause 17(8) has the same meaning as in the Children Act 1989) or a person appointed as a litigation friend may bring the complaint. This clause does not prevent another person from bringing the complaint, for example the archdeacon or diocesan safeguarding officer.

102. Clause 17(2) provides that a person who otherwise would have a proper interest but lacks capacity (which under clause 17 (9) is to be read with the Mental Capacity Act 2005) may appoint a litigation friend to bring the complaint. This provision does not affect the powers of any person who may be appointed an attorney or other authorised person under the Mental Capacity Act 2005.

103. Clause 17(3) provides that a person who has a proper interest in bringing a complaint and who has a disability (which under clause 17(10) has the same meaning as in section 6 of the Equality Act 2010) may appoint a litigation friend to bring the complaint.

104. Clause 17(4) provides that the appointment of a litigation friend is to be by the President of Tribunals in accordance with the procedure that will be set out by the rules.

105. Clause 17(5) is a standard provision that sets out that it is the duty of a person appointed as litigation friend for another person to act in the best interests of that person.

106. Clause 17(6) confirms the position that a person who under this clause is authorised by virtue of their appointment as litigation friend is treated as having a proper interest in the complaint.

Clause 18 Self-referral by cleric

107. Clause 18 creates a new provision whereby a cleric may self-refer themselves into the system in respect of their own conduct. There is no obligation on a cleric to do so and they may not do so where the conduct in question is already the

subject of a complaint under this Measure or the CDM. The clause also sets out where a self-referral is to be made to.

Clause 19 Limitation periods

108. This clause deals with the period in which a complaint against a cleric must be brought, known as a limitation period.
109. Clause 19(2) provides that a complaint that constitutes a grievance or misconduct (that is not serious misconduct) must be brought within 12 months of the last occurrence of the conduct ending with the date the complaint is made. Where the conduct constitutes a course of conduct the whole of the conduct may fall within the scope of the complaint so long as the last event is within 12 months of the complaint being brought.
110. Clause 19(3) provides that the President of Tribunals may nevertheless give written permission for a complaint of misconduct (that is not serious misconduct) to be made outside of the 12 months limitation period where the President considers there was a good reason why the complaint was not made within time. The Code of Practice will give further guidance on what constitutes a good reason.
111. It will not be possible to seek permission from the President to bring a grievance outside of the 12 month time period.
112. Clause 19(4) allows the President to give permission under clause 19(3) at any time, even after a complaint has been made and allocated.
113. Clause 19(5) requires the President to consult such persons as may be specified in the rules before allowing a complaint of misconduct to be brought outside of the 12 month time limit.
114. Clause 19(6) allows for a complaint to be made in respect of conduct occurring before the coming into force of the Measure, subject to the limitations imposed by this clause regarding time limits as set out above.
115. There is no limitation period for complaints of serious misconduct. This is a change to the current position, and implements an IICSA recommendation.

20 Referral of a complaint

116. This clause sets out the actions that must take place once a complaint has been made to the responsible bishop.
117. Clause 20(1)(a) requires that upon receiving the complaint the responsible bishop must refer the case to the lead assessor for the region in which the diocese

in question is located. This is for the purposes of allocating the complaint to the appropriate track.

118. The operation of clauses 20(1)(b) and 20(2) and (3) is to require referral to the police (unless it has already been referred), and to the diocesan safeguarding officer (unless it has already been referred), where the condition for doing so are met.

119. Clause 20(4) requires the responsible bishop to consider and offer appropriate pastoral support to each of the parties to the complaint, people in the area where the respondent exercises ministry (for example churchwardens or other parishioners) and any other person with an interest in the complaint (for example the person who experienced the alleged conduct or another witness).

21 Allocation of complaint

120. Clause 21(1) requires the regional lead assessor to either allocate the complaint to one of three tracks (grievance, misconduct and serious misconduct) or to make a recommendation to the responsible bishop that the complaint be dismissed on the grounds that it is vexatious or totally without merit. Clause 21(2) requires the assessor to notify the responsible bishop of the decision and clause 21(3) requires the bishop to notify the parties.

121. Clause 21(4) makes provision that, in the case of a complaint allocated as a grievance, the bishop must appoint a designated person to investigate and seek to resolve the grievance.

122. Clause 21(5) provides that where the case is allocated as misconduct (but not serious misconduct) then the regional lead assessor must appoint a case assessor from the regional panel.

123. Clause 21(6) provides that where the case is allocated as serious misconduct then the responsible bishop must refer the case direction to the ITT. Where a complaint alleges a mix of misconduct and serious misconduct all of the alleged misconduct (whether serious or not) will be referred to the ITT

124. Clause 21(7) requires the bishop to dismiss the complaint where that has been the recommendation of the lead assessor under subsection (1).

Clause 22 Grievance

125. This clause sets out the basic procedure for investigating and resolving a grievance. It will be supplemented by procedural rules and guidance in the Code of Practice.

126. Clauses 22(3) and (4) make provision for the re-allocation of a grievance at any time before it has been resolved. This may be, for example, where during the investigation stage new evidence comes to light that warrants a re-evaluation of the allocation.

127. Clause 22(5) provides for the allocation process to be rerun.

128. Clause 22(6) provides that where the designated person is satisfied that it is not possible to resolve the complaint, then the designated person must inform the parties, the lead assessor and the responsible bishop.

23 Complaint of misconduct: investigation

129. Clause 23 sets out the process for the investigation of a complaint of misconduct (but not serious misconduct).

130. Clause 23(2) requires that the case assessor appointed from the regional panel be from a diocese other than one in which either the respondent or complainant resides.

131. Clause 23(3) sets out that it is the role of the case assessor to investigate the complaint and make such findings of fact that are required for determining the complaint. The procedural rules and Code of Practice will set out further details on the process that the case assessor will follow.

132. Clauses 23(4) and (5) provide that the case assessor must seek advice from the ITT where an issue specified in the rules arises (for example a question of law) and that the case assessor may seek advice from the ITT on any issue relating to the complaint.

133. Clauses 23(6) and (7) provide the same procedure as in clause 22 for the re-allocation of the complaint as a grievance or a case of serious misconduct and for the subsequent decision by the lead assessor.

134. Clause 23(8) is the same as clause 22(5) and provides for the allocation process to be rerun.

Clause 24 Complaint of misconduct: report

135. This clause sets out what happens once the case assessor has completed the investigation. Under clause 24(1) the assessor must write and issue a report to the parties and to the responsible bishop. Clause 24(2) provides that the rules will specify the time period and the contents of the report.

136. Clause 24(3) sets out the recommendations that the case assessor may make.

137. Clause 24(4) makes provision for the case assessor, when recommending that the case be dismissed, to also recommend that the complaint be declared vexatious or totally without merit.

138. Clause 24(5) requires the responsible bishop to implement the recommendations in the report, unless the bishop is satisfied that there is a good reason not to do so.

Clause 25 Complaint of misconduct: conciliation

139. Clause 25 set out the process for the parties entering into conciliation where the complaint has been allocated as misconduct (but not serious misconduct). It does not apply to cases that have been allocated as a grievance, but the procedure set out in the rules for resolving grievances will allow for a separate process akin to a conciliation.

140. Where conciliation is reached, an agreement must be put in writing and no further steps may be taken on the complaint. If within three months conciliation is not reached, then the complaint proceeds in accordance with the preceding clauses.

Clause 26 Complaint of serious misconduct

141. This clause sets out the process when a complaint is allocated as serious misconduct.

142. Clause 26(2) provides that the ITT is to investigate the complaint and make a report to the President of Tribunals.

143. Clause 26(3) operates so as to allow a person other than a member of the ITT to carry out the investigation and write the report (for example an external investigator or barrister).

144. Clause 26(4) requires that the report to the President be given to the parties and that each party be given an opportunity to make written representations to the President.

145. Clause 26(5) then requires the President to consider the report and the representations and either refer the complaint in full for determination by a bishop's disciplinary tribunal (for priests and deacons) or the Vicar-General's Court (for bishops and archbishops), to refer part of the complaint and dismiss the remainder, or to dismiss the complaint in full.

146. Clauses 26(6) and (7) set out the test that the President is to apply in making the above decision. The President must consider if there is a real prospect of a finding of misconduct; if so, whether it is likely that the misconduct would be a

finding of serious misconduct; and if so whether there are exceptional circumstances such that referring the complaint to a court or tribunal would cause an injustice.

147. Where the President is satisfied that the test is met, the complaint must be referred to a bishop's disciplinary tribunal or to the Vicar-General's court.

148. Clause 26(8) provides that where the President determines that there is no real prospect of a finding of misconduct then the case must be dismissed.

149. Clause 26(9) provides that if the President determines that there is a real prospect of a finding of misconduct, but that the misconduct would not amount to serious misconduct, then the President must refer the case to the regional lead and the complaint proceeds as if it has been allocated as misconduct (but not serious misconduct).

150. Clause 26(10) requires the President to put the decisions in writing.

Clause 27 Bishop's disciplinary tribunal

151. Clause 27 sets out the composition of and appointment to a bishop's disciplinary tribunal. The tribunal is reduced from five persons (under the CDM) to three.

Clause 28 Vicar-General's court

152. Clause 28 sets out the composition of and appointment to the Vicar-General's court. The composition of the Courts has also been reduced to three persons. Where the Vicar-General is unable or unwilling to serve as Chair, the President of Tribunal (or deputy) or a person appointed from the relevant sections of the provincial panel may be appointed as Chair.

Clause 29 Procedural matters

153. Clause 29(1) provides that the standard of proof to be applied by a Bishop's disciplinary tribunal or Vicar-General's court is the balance of probabilities. This is the usual standard of proof in civil and disciplinary cases.

154. Clause 29(2) provides that a decision of a court or tribunal is to be taken by a majority of its members, but there is an exception for any question of law or procedure, where the decision is to be taken by the Chair alone. This is a change from the CDM, and reflects the fact that only the Chair is legally qualified.

155. Clause 29(3) requires a tribunal or court to sit in private except in such cases as may be specified in the rules. Where it does sit in public, it may exclude such persons as it decides from the whole or part of the proceeding.

156. Clause 29(4) allows for the rules to make provision for certain procedural matters.

Clause 30 Vexatious litigant: application for restraint order

157. Clause 30 is a new provision that allows for the respondent to a complaint, or a bishop or archbishop, or the ITT, to apply for a restraint order against a vexatious litigant.

158. Clause 30(2) sets out what a restraint order is and the consequences of an order being made. Where a restraint order is in place the person subject to the order must not make any complaint, request or application without the prior permission of the President. Similarly a person with a proper interest may not make the complaint, request or application on behalf of a person subject to a restraint order. Any complaint, application or request that had been made before the restraint order was made proceeds no further.

159. Clause 30(3) provides that the application is to be made either to the President of Tribunals or to a court or tribunal if one has been convened.

160. Clause 30(4) sets out the test to be applied upon an application for a restraint order and (5) provides that before making an order the person against whom the order would be made must be given an opportunity to make written representations.

Clause 31 Vexatious litigant: operation of restraint order

161. Clause 31(1) and (2) provides for the period that the restraint order is to remain in force and for the publication of the order in line with directions issued by the President.

162. Clause 31(3) operates so as to make any complaint, application or request made by a person subject to an order without the necessary permission to be a nullity.

163. Clause 31(4) and (5) sets out the test for the granting of permission to a person who is subject to a restraint order to bring a complaint, application or request and also makes provision for the variation and discharge of an order.

Clause 32 Restriction order and suspensions: power to impose

164. Clause 32 sets out the circumstances when a restriction order may be made against a cleric or when a cleric may be suspended.

165. The grounds in clause 32(1) remain the same as for suspension under the CDM 2003, save that a restriction order or suspension may only be imposed on a complaint of misconduct or serious misconduct (i.e. not in the case of a grievance)

and may also be imposed when criminal proceedings are commenced against a cleric¹.

166. Clause 32(3) allows for a restriction order or suspension to be revoked at any time.
167. Clause 32(4) sets out who may impose the order or suspension. In the case of an archbishop the relevant officer is now the President of Tribunals.
168. Clause 32(5) repeats the provisions of the CDM 2003 in relation to the meaning of 'significant risk' for the purposes of clause 32(1)(f).
169. Clause 32(6) confirms that references to being arrested or convicted of an offence or having proceedings commenced for an offence include a reference to that taking place outside of England.

Clause 33 Restriction order

170. This clause sets out provisions relating to the making of a restriction order and the test and procedure for imposing the order.
171. Clause 33(2) provides that the relevant officer (which is the person who imposes the order) may only do so once they have considered all the circumstances of the case and is satisfied that an order is necessary to secure the proper exercise of a typical clerk in Holy Orders.
172. Where an order is imposed the cleric may not carry out the action specified in the order unless the person who imposed the order gives permission. A restriction order differs from a full suspension in that a suspension is a full prohibition from exercising any function in relation to the cleric's office. It is designed to be a more proportionate response to lower-level concerns raised about the cleric's conduct.

Clause 34 Suspension

173. Clause 34 deals with the power to suspend a cleric.
174. Clause 34(1) sets out the definition of a suspension.
175. Clause 34(2) sets out a new test for suspension. The relevant person must first have considered whether it would be sufficient to impose a restriction order. If they are satisfied that such an order would not be sufficient, then they may only suspend the cleric where it is necessary to do so, having considered all the circumstances of the case.

¹ Under the CDM this ground was limited to the cleric being arrested or convicted of an offence. Some criminal proceedings may be commenced without a person being arrested.

176. Clause 34(3) provides for consultations prior to imposing a suspension.
177. Clause 34(4) provides that, before a bishop or archbishop may be suspended the consent of the two most senior bishops in the province must be obtained.
178. Clause 34(5) – (7) makes provision for the creation of rules concerning the giving of notice and revocation of suspension and the period of suspension.
179. Clause 34(8) – (10) provides for the making of arrangements for ministry in the relevant place where the cleric is suspended

Clause 35 Penalties and administrative sanctions

180. Clause 35(1) sets out the penalties that may be imposed for misconduct. Two new penalties have been added which are (i) a reprimand, which is a written notice given to the respondent concerning the commission of misconduct that is not serious and (ii) a mentoring and supervision requirement, which would require the respondent to be supervised and mentored by another cleric for a period of time specified in the order.
181. Clause 35(2) makes new provision for administrative sanctions, which are not a penalty, for lower-level misconduct.

Clause 36 Power to impose penalty or administrative sanction

182. Clause 36 sets out the circumstances in which a penalty or administrative sanction may be imposed.
183. Clause 36(1) provides that where a case assessor makes a finding that the respondent has committed misconduct then the responsible bishop may impose a penalty or an administrative sanction. The responsible bishop may not impose both.
184. Clause 36(2) provides that that a tribunal or court may impose either a penalty or an administrative sanction when dealing with misconduct or serious misconduct.
185. Clause 36(3) provides that the responsible bishop may impose a penalty or administrative sanction where the respondent admits misconduct.
186. Clauses 36(4) and (5) provide that where in a complaint of serious misconduct the respondent admits to the misconduct the court or tribunal, as the case may be, may impose a penalty or administrative sanction.
187. Clause 36(6) provides that where the respondent enters a partial admission, either to a complaint of misconduct or serious misconduct, a penalty or

administrative sanction may not be imposed until such time as the remaining part has been determined, either as a result of a tribunal or court, or by being withdrawn.

Clause 37 Exercise of power under section 36

188. Clause 37(1) operates so that the responsible bishop when dealing with a case of misconduct may only impose following penalties:
- a. reprimand;
 - b. mentoring and supervision order; and
 - c. Injunction;
- or may impose either or both of the administrative sanctions (written warning and written advice).
189. Clause 37(2) operates so that a tribunal or court may impose any of the penalties or either or both of the administrative sanctions.
190. Clause 37(3) confirms that, for the avoidance of doubt, where one or both of the administrative sanctions is imposed, a penalty may not be imposed.
191. Clause 37(4) inserts a new provision that allows a tribunal or court to take into account any period that a respondent has been suspended when imposing a limited prohibition, but in doing so may not extinguish the total period of prohibition altogether.
192. Clause 37(5) and (6) repeats the current provisions in the CDM whereby a tribunal or court may invite the responsible bishop to give a written opinion of what an appropriate penalty would be in the particular case.
193. Clause 37(7) requires those imposing a penalty to have due regard to the Code of Practice, which will set out guidance and factors to take into account.

Clause 38 Conditional discharge

194. Clause 38 repeats like provisions in the CDM for the imposition of a conditional discharge where the responsible bishop or the tribunal or court is of the opinion that it is not expedient to impose a penalty or administrative sanction. A conditional discharge may only be imposed for a period not exceeding two years from the date of the order.
195. Where a respondent, during the period of discharge, commits further misconduct, the bishop, court or tribunal as the case may be, may deal with the Respondent for both the original misconduct and the new misconduct.

Clause 39 Deposition from Holy Orders: priest or deacon

196. Clause 39 re-introduces a power for a bishop to depose a priest or deacon from Holy Orders following a finding of misconduct that does not involve a question of doctrine, ritual or ceremony. The re-introduction of this power implements an IICSA recommendation. Canon C1.2 provides that once a person is admitted to Holy

Orders they can never be divested of the character of the order, but may by legal process be deposed from them. The power to depose will be exercisable only where a tribunal has imposed a penalty of prohibition for life.

197. Where a tribunal makes a recommendation that the respondent be deposed from Holy Orders the bishop may then depose that person, subject to the provisions of clause 39(4) to (8) which sets out a process of appeal to the archbishop of the relevant province.

198. The effect of deposition from Holy Orders is that the person must thereafter live their life as a lay person and the same consequences apply as if the person had voluntarily relinquished their orders by deed under the Clerical Disabilities Act 1870².

Clause 40 Deposition from Holy Orders: bishop or archbishop

199. Clause 40 makes equivalent provision for deposition from Holy Orders in respect of a bishop or archbishop. In the case of a bishop or archbishop the Upper House of the relevant Convocation must consider the recommendation and may not pass a resolution to depose the person from their orders until they have given the bishop or archbishop an opportunity to be heard before it and considered any representations.

Clause 41 Restoration on pardon

200. Clause 41 provides that the Royal prerogative of mercy (“a free pardon”) applies to proceedings under this Measure, the CDM or the Ecclesiastical Jurisdiction Measure 1963 (“EJM”).

201. Where a person receives a free pardon the relevant prohibition, removal or deposition ceases to apply and the person is restored to any preferment previously held, unless it has been filled in the meantime.

² (1) *He shall be incapable of officiating or acting in any manner as a minister of the Church of England, and of taking or holding any preferment therein, and shall cease to enjoy all rights, privileges, advantages, and exemptions attached to the office of minister in the Church of England:*

(2) *Every licence, office, and place held by him for which it is by law an indispensable qualification that the holder thereof should be a minister of the Church of England shall be ipso facto determined and void:*

(3) *He shall be by virtue of this Act discharged and free from all disabilities, disqualifications, restraints, and prohibitions to which, if this Act had not been passed, he would, by force of any of the enactments mentioned in the first schedule to this Act or of any other law, have been subject as a person who had been admitted to the office of minister in the Church of England, and from all jurisdiction, penalties, censures, and proceedings to which, if this Act had not been passed, he would or might, under any of the same enactments or any other law, have been amenable or liable in consequence of his having been so admitted and of any act or thing done or omitted by him after such admission. This final paragraph is subject to the provisions of clause 43(2) of this Measure.*

Clause 42 Limited prohibition: performance of cleric's functions

202. This clause makes provision for the exercise of functions when a priest or deacon holding preferment, a suffragan or diocesan bishop, or an archbishop is subject to a period of limited prohibition.

203. In each case the bishop or archbishop, as the case may be, may appoint some other person to carry out the cleric's functions during the period of prohibition, save that in the case of an archbishop the other archbishop is to carry out those functions.

Clause 43 Disobeying penalty etc

204. Clause 43(1) provides that a breach of any penalty or censure imposed under this Measure or the CDM or the EJM is to be regarded as misconduct for the purposes of clause 3(1)(a).

205. Clause 43(2) provides that where a person has been deposed from Holy Orders a subsequent complaint may still be brought against them, as if they had not been deposed.

Clause 44 Conviction for offence etc. power to impose penalty etc

206. Clause 44 provides that where a cleric is convicted of an offence, whether committed in England or elsewhere, or is included in a barred list, a penalty or administrative sanction may be imposed on the cleric without the need for a complaint to be made.

207. Clause 44(2) to (6) sets out who may impose the penalty or sanction, the requirement for that person to obtain a report from the ITT, and allows representations from the cleric in question. It also sets out the guidance that must be taken into account and the procedure for imposing the penalty.

208. Clause 44(7) provides that the provisions of clauses 36 to 43 (which includes the power to depose from Holy Orders) apply to penalties imposed under this clause.

209. Clause 44(8) allows for the rules to provide that certain specified offences or an offence of a certain description does not fall within this clause. For example, minor traffic offences.

210. Clause 44(9) provides that this clause applies to a conviction or inclusion in a barred list which occurred before the cleric was in Holy Orders and which occurred before the coming into force of the Measure.

211. Clause 44(10) provides for a definition of 'relevant diocese' for the purposes of clause 44(2).

Clause 45 Power under section 44: time limit

212. Clause 45(1) provides that the power to impose a penalty or administrative sanction above must be exercised within two years of the date the conviction becomes conclusive (for the definition of which see clause 65) or the date on which the cleric was included on the barred list.

213. Clause 45(2) and (3) sets out that the President may on application extend the above period if satisfied the applicant did not know about the conviction or inclusion and provides for who must make the application.

Clause 46 Recognition of external decisions etc.

214. Clause 46 is a new provision to recognise disciplinary findings made by a church other than the Church of England, or by the Church of England in a territory where this Measure does not apply. For example, clause 46 would operate to recognise a disciplinary finding made by the Church in Wales against a priest who was at the time of the misconduct licensed in the Church in Wales, but at the time of the Welsh disciplinary proceedings held licence in the Church in England. This finding of misconduct could be relied upon by the Church of England and, subject to the procedures set out in this clause, a penalty (including removal from office and prohibition) imposed on the cleric.

215. Clauses 46 (1) - (3) provide that where the President of Tribunals is satisfied that a cleric who holds a form of authority to exercise ministry in either province in the Church of England is subject to a finding by the other church or territory which would amount to misconduct under this Measure, the President may either take no further action or may refer the matter to a tribunal or court. Before making the decision the President must seek written representations from the ITT and the cleric in question.

216. Clause 46(4) requires the President to record the decision in writing.

217. Clause 46(5) provides that upon referral to a court or tribunal that body may impose a penalty or administrative sanction for the misconduct.

Clause 47 Review etc by the President of Tribunals

218. Clause 47 sets out each occasion that a person may request the president to review a decision, finding of fact, order or penalty. The procedural rules that will accompany the Measure will set out the procedure for requesting a review and the procedure along with the powers of the President when determining a request.

Clause 48 Review by the President of penalty etc under section 44

219. Clause 48 provides that a cleric on whom a penalty has been imposed under clause 44 (i.e. following a conviction for an offence) may seek a review of that penalty.

220. In the case of a priest, deacon or bishop that review is considered by the President of Tribunals. In the case of an archbishop it is considered by the Dean of the Arches and Auditor (because the President will have imposed the penalty).
221. In each case the President or Dean must invite written representations from the persons or body listed in either clause 48(3) or 48(4).
222. The procedural rules will set out the procedure for requesting a review along with the procedure and powers of the President or Dean when determining a request.

Clause 49 Appeals etc to court

223. Clause 49 sets out the routes of appeal open to each party to appeal against the decision of a tribunal or court.
224. Clauses 49(1) and (2) provide that a respondent may appeal against a penalty imposed by a tribunal or court, or on a question of law or finding of fact determined by a tribunal or court.
225. Clauses 49(3) and (4) provide that the ITT may appeal on a question of law against a finding of a tribunal or court and may also apply for a review of the penalty imposed where it appears that it was unduly lenient.

Clause 50 Permission to appeal

226. Clause 50 sets out that an appeal or application for review, as set out above, may only be made where prior permission has been given by the tribunal or court which heard the proceedings, or the Arches Court of Canterbury or the Chancery Court of York, depending on the province.
227. Clauses 50(2) and (3) make provision for who determines applications for permission and enables directions to be made as to the issues that may be determined on any appeal or review.
228. Clauses 50(4) and (5) make provision for the implementation and recording in the Archbishops' List of any penalty to be postponed pending the disposal of the application for permission or the appeal.

Clause 51 Composition of court on appeal or review

229. Clause 51(1) provides that for an appeal brought by a priest or deacon or an application for review of penalty brought by the ITT the Court is to be comprised of the Dean of the Arches and one judge from the relevant provincial panel (see clause 10(2)(a) and (d)(ii)) and one clerk in Holy Orders from the relevant provincial panel (see clauses 10(2)(a) and (e), both appointed by the President).
230. Clause 51(2) provides that an appeal by a bishop or archbishop is to be heard by the same composition, save that the clerk in Holy Orders must be in Episcopal

Orders and need not be on either provincial panel but must serve or reside in the other province to the appellant.

Clause 52 Duty to disclose convictions, arrests, cautions

231. This clause sets out the duties on a cleric to disclose when they have been arrested, charged with an offence, had proceedings for an offence commenced against them, convicted of an offence or received a caution, or have been include in a barred list (which must include the reason). The clause operates so as to include offences committed outside of England.

232. Clause 52(4) provides that the rules may specify that certain offences fall outside the duty to disclose. For example, minor traffic offences.

Clause 53 Duty to disclose divorce or separation order

233. Clause 53 makes provision requiring the disclosure of a final divorce order or a judicial separation.

Clause 54 Panel of solicitors

234. Clause 54 makes amendments to the Church of England (Legal Aid) Measure 1994 to include a power for the rules made under that Measure to make provision for the creation of a panel of solicitors' firms. Subject to any circumstances specified in the rules, only solicitors from such a firm will be eligible to represent respondents under a legal aid certificate.

Clause 55 Place where courts and tribunals to sit

235. Clause 55 is a standard provision that provides for where a court or tribunal may sit to hear cases.

Clause 56 Evidence

236. Clause 56 sets out that the powers of a court or tribunal are the same as the High Court in relation to the attendance and examination of witnesses and the production and inspection of documents. This replicates existing provisions that apply to proceedings under the CDM 2003.

Clause 57 Contempt

237. Clause 57 restates the provisions of the CDM 2003 in relation to a person carrying out an act or omission before a court or tribunal that would constitute contempt. Where that takes place the judge or chair of the court or tribunal may send a certificate to the High Court which in turn may consider proceedings for contempt.

Clause 58 Costs and fees

238. Clause 58 makes provision for the payment by the Archbishops' Council and the Church Commissioners of the costs and fees in relation to the work of bishops

and archbishops (but not in their capacity as a respondent), the tribunal and courts, and ecclesiastical judges or legal officers, concerned with this Measure.

Clause 59 Recording and publication of decisions

239. Clause 59(1) requires that judgments, orders or other decisions made under the Measure must be recorded in the diocesan or provincial registry.

240. Clause 59(2) requires that judgments, orders or other decisions must be published in the form and manner that may be specified in the procedural rules.

Clause 60 Archbishops' List

241. Clause 60 provides for the continuation of the Archbishops' List. Under the CDM the List is a record of all clerks in Holy Orders who have subject to penalty or censure under the CDM or EJM; who have been deposed from Holy Orders or who have voluntarily relinquished their Orders under deed; who resigned their office following a complaint being made under the CDM or EJM; whose name has been included in a barred list; or who in the opinion the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment.

242. The clause and sets out the grounds upon which a cleric is to be added to the List and the making of procedural rules for an appeal process against the particulars (but not the inclusion) of the entry. The names of clergy who were placed on the list under the provisions of the CDM and EJM will continue to appear on the List.

243. It will no longer be possible to add a person to the List where they have behaved in a way not amounting to misconduct but the Archbishops were nevertheless of the view that their conduct might affect their suitability for holding preferment. Furthermore, the provisions concerned with the removal of names from the List after a specified period have not been replicated in this Measure, so names of those on whom a penalty or an administrative sanction has been imposed will remain on the List indefinitely.

Clause 61 Delegation by bishop or archbishop

244. Clause 61 allows a bishop or archbishop to directly delegate their functions under this Measure to another bishop from either inside or outside the diocese. This provision replaces the need for bishops to rely upon the more general procedures in section 13 of the Dioceses, Pastoral and Mission Measure 2007 which are not designed for dealing with delegation in cases of discipline.

Clause 62 Rights of Patronage

245. The clause makes provisions to protect the rights of patrons in the event that an incumbent is removed from office as a result of this Measure. Clause 62(2)

operates so that the start date specified in a notice that is required to be served under section 7(4) of the Patronage (Benefices) Measure 1986 is the date specified in the notice, and not when the incumbent was removed from office, which may have been earlier.

246. Clause 62(2) repeats a provision which is contained in section 76 EJM 1963 and was applied to the CDM by application section 35 CDM 2003, and provides for the vesting of any right of patronage held by a person suspended or subject to a limited prohibition in one of the archbishops.

Clause 63 House of Bishops' declarations: procedure

247. This clause sets out the procedure before the House of Bishops and General Synod where the House of Bishops wishes to make a declaration for the purposes of clause 3(4) of this Measure (i.e. a declaration that the policies etc. of a political party are incompatible with the church's teaching on racial equality). A declaration made by the House of Bishops must be laid before General Synod and if at least 25 members of Synod give notice that they wish it to be debated it must be so.

Clause 64 Interpretation

248. Clause 64 defines a number of words and phrases, as well as clarifying some of the terminology used in the Measure.

Clause 65 Conclusive convictions

249. Clause 65 provides for when convictions for criminal offences become conclusive as well as setting out various provisions for relying upon convictions and cautions as conclusive evidence that the respondent has committed the conduct to which the convictions or cautions relates.

Clause 66 Ancillary amendments

250. Clause 66 refers to the consequential amendments set out in schedule 1.

Clause 67 Repeals

251. Clause 67(1) repeals the CDM 2003.

252. Clauses 67(2) lists a number of provisions that are in consequence repealed.

Clause 68 Transitional and saving provisions

253. Clause 68 refers to the transitional and saving provisions set out in schedule 2.

Clause 69 Citation, commencement and extent

254. Clause 69 makes standard provision for the Measure's citation, commencement and extent.

255. The Measure may be applied to the Channel Islands or extended to the Isle of Man where those jurisdictions make provision under their own laws and procedures for doing so.

Schedule 1 Ancillary Amendments

256. Schedule 1 sets out a number of amendments to Acts, Measures and Regulations consequential on the passing of this Measure.

Schedule 2 Transitional and Saving Provisions

257. Paragraph 1 provides that proceedings under the CDM that have commenced and not yet completed when this Measure comes into force continue under the CDM until they are completed.

258. Paragraph 2 makes provision for penalties under the CDM or censures *etc* imposed under the EJM to be treated in the same manner as if they were imposed under this Measure. Further provision is made for dealing with conditional deferments and conditional discharges made under the CDM by this Measure once it comes into force.

259. Paragraph 3 makes provision for those persons on the provincial panel under the CDM to continue on that panel when this Measure comes into force and also provides for the filling of casual vacancies.

260. Paragraph 4 provides for the continuing effect of guidance issued by the House of Bishops and the operation of article 3 of the Safeguarding (Code of Practice) Measure 2021 (Commencement and Transitional Provision) Order 2022, in so far as it relates to clause 3(1)(b) of this Measure.

261. Paragraph 5 is a technical provision dealing with the interaction between this Measure and the Interpretation Act 1978.

June 2022

THE LEGAL OFFICE
Church House
Westminster

DRAFT CLERGY CONDUCT RULES

Illustrative outline of the structure of the rules

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**PART 10
COMPLAINTS OF MISCONDUCT**

This part will set out rules relating to the investigation and disposal of complaints of misconduct by the case assessor.

**PART 11
COMPLAINTS OF SERIOUS MISCONDUCT**

This part will set out rules relating to the investigation of complaints of serious misconduct, the role of the ITT, and the procedure for referral of complaints to the tribunal or court.

**PART 12
ADMISSIONS**

This part will set out rules relating to the procedure around a respondent making full and partial admissions and the withdrawal of admissions

PART 13
TERMINATION AND WITHDRAW OF COMPLAINTS

This part will set out rules relating to the procedure concerning the termination and withdrawal of complaints.

PART 14
CASE MANAGEMENT POWERS OF TRIBUNALS AND COURTS

This part will set out rules relating to the case management powers of a bishop's disciplinary tribunal and Vicar-General's court.

PART 15
CONDUCT OF HEARINGS

This part will set out rules relating to the conduct of hearings before a tribunal or court, whether hearings are in public or private, who may attend hearings, pronouncements of decisions, and other general provisions.

PART 16
EVIDENCE

This part will set out rules relating to the admissibility and control of evidence before a tribunal or court, including the use of expert evidence.

PART 17
DIRECTIONS

This part will set out rules relating to the matters as to which directions may be given in relation to a hearing, who has the power to give directions, the consequences for failure to comply with directions and other general provisions.

PART 18
SPECIAL MEASURES RELATING TO VULNERABLE PARTIERS AND WITNESSES

This part will set out rules relating to granting special measures to vulnerable and other witnesses, including who may receive special measures, what they are, and how they are to be applied.

PART 19
VEXATIOUS LITIGANTS

This part will set out rules relating to the making of a restriction order against a vexatious litigant.

PART 20
PENALTIES AND ADMINISTRATIVE SANCTIONS

This part will set out rules relating to the imposition of penalties and administrative sanctions.

PART 21
RESTRICTION ORDERS AND SUSPENSIONS

This part will set out rules relating to the imposition of restriction order and suspension.

PART 22
MISCELLANEOUS AND GENERAL

This part will set out miscellaneous and other rules concerning the general operation of the system provided for in the Measure. These will include the procedure around the Archbishops' List, contempt, interpretation of phrases or particular words, tribunal and court staff, and other associated provisions.

PART 23
REVIEWS AND APPEALS

This part will set out rules relating to the making of reviews and appeals, the powers of the judge when disposing of a review or appeal, the procedure and process before the appellate courts as well as other general provisions.

PART 24
CITATION, COMMENCEMENT AND TRANSITIONAL PROVISIONS

This part will set out standard provisions relating to the citation and commencement of the rules, and any necessary transitions provisions.

SCHEDULES

Any prescribed forms will be contained in a schedule.