

## GENERAL SYNOD

## SAFEGUARDING (CLERGY RISK ASSESSMENT) REGULATIONS 2024

## Explanatory Notes

The draft Safeguarding (Clergy Risk Assessment) Regulations 2024 make provision for the procedure for carrying out risk assessment of clergy under Canon C 30. They have been drafted in light of changes to that Canon by Amending Canon 42 and to implement recommendations by the Independent Inquiry into Child Sexual Abuse.

## BACKGROUND

1. In March 2021, the House of Bishops and the Archbishops' Council accepted the recommendations made by the Independent Inquiry into Child Sexual Abuse (“IICSA”) in its 2020 report concerning the Anglican Church.
2. IICSA Recommendation 1 provided that:

“The Church of England should create the role of a diocesan safeguarding officer to replace the diocesan safeguarding adviser. Diocesan safeguarding officers should have the authority to make decisions independently of the diocesan bishop in respect of key safeguarding tasks, including [...] risk assessments and associated plans for Church officers and members of the congregation.”
3. In September 2021, the IICSA Recommendations 1 and 8 Project Board (“**the Project Board**”) was established to steer the implementation of IICSA recommendations relating to the operational structure of safeguarding in the Church (Recommendation 1) and independent auditing of Church safeguarding (Recommendation 8).
4. The Project Board identified several items of legislation which required amending to implement IICSA’s first recommendation. This included Canon C 30 and the Safeguarding (Clergy Risk Assessment) Regulations 2016.
5. Canon C 30 was modified by Amending Canon 42, which was made by General Synod in July 2023. The provisions of the Amending Canon will come into force in each diocese upon certification by the Archbishops' Council for that diocese.
6. In autumn 2023, draft Safeguarding (Clergy Risk Assessment) Regulations were prepared to replace the 2016 Regulations.

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7. In October 2023, the National Safeguarding Steering Group (NSSG) approved the draft Regulations for consultation. Consultation took place in November and December 2023 and 36 consultation responses were received from across 23 dioceses.
8. The Project Board considered consultation feedback in January 2024 and approved a revision of the draft Regulations in April 2024 for submission to the House of Bishops. The House of Bishop approved the draft Regulations in June 2024.
9. Under Canon C 30.3(3) the draft Regulations do not come into operation unless and until they have been approved by the General Synod.

### SUMMARY OF MAIN CHANGES

*A copy of the 2016 Regulations can be found [here](#).*

#### **Mandatory advice on giving a direction for an assessment**

10. The power to give a direction for a cleric who holds a form of authority to officiate to undergo a risk assessment is contained in Canon C 30.2. This discretion remains with the bishop<sup>1</sup>. These draft Regulations contain a new provision requiring that when consideration is being given to making a direction under the Canon, the DSO must advise the bishop in writing as to the factors the bishop must take into account.

#### **The role of the bishop**

11. The main functions performed by the bishop under the 2016 Regulations are transferred to the Diocesan Safeguarding Officer (DSO). This reflects IICSA's recommendation that DSOs have "independent authority" over the risk assessment process.
12. Principally, the 2016 Regulations provide for the diocesan bishop to approve the terms of reference for the risk assessment of a cleric. The draft Regulations remove this provision, and instead provide that the terms of reference should be prepared by the Diocesan Safeguarding Officer (DSO) in consultation with the bishop.
13. Further, the 2016 Regulations set out the bishop's responsibilities following the assessment. These responsibilities have been removed in this draft and the process for implementing and monitoring risk assessments will be covered in the Managing Allegations Safeguarding Code of Practice<sup>2</sup>.

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<sup>1</sup> Where the person is a bishop, the power lies with the relevant archbishop; where it is the archbishop being assessed, the other archbishop gives the direction.

<sup>2</sup> Which will be binding upon the bishop as a 'relevant person' under section 5A(2) Safeguarding and Clergy Discipline Measure 2016.

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### External assessors

14. Under the 2016 Regulations, all risk assessments of clerics were required to be conducted by an assessor external of the diocese and not by the DSA.
15. Implementing the IICSA recommendations on the greater independence of the DSO, the draft Regulations provide that the DSO may either carry out a risk assessment personally or, where the DSO considers it necessary (for example in cases of conflict of interest), the DSO may appoint an external assessor to carry out the assessment.

### Right of review

16. Canon C 30.2 provides that the cleric may request the President of Tribunals to review the direction for a risk assessment to take place. The draft Regulations require the DSO to remind the assessed person of this right when giving them an initial written statement.

### Personal Information

17. The requirements in relation to personal data have been removed into a new free-standing paragraph. Under the 2016 Regulations explicit reference was made to 'consent' as a lawful basis for personal data sharing data with third parties. This has been removed on the basis that consent will not always provide the most secure basis under UK GDPR to sharing data<sup>3</sup>.
18. The requirement remains for the DSO to consider what personal data is contained in the risk assessment and to take any necessary steps under data protection law prior to sharing the report. Further guidance will be set out in the Managing Allegations Safeguarding Code of Practice.

## THE REGULATIONS

### Paragraph 1 - Citation, application and commencement.

19. Paragraph 1 provides that the Regulations may be cited as the 'Safeguarding (Clergy Risk Assessment) Regulations 2024' and that they apply to any risk assessment directed under Canon C 30.2(1) or 30.2(2).
20. The Regulations will come into force in a diocese on the day that Amending Canon 42 comes into force in that diocese, and at the same time the 2016 Regulations are repealed in full in that diocese.

### Paragraph 2 – Decision to make a direction

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<sup>3</sup> For example, a data subject can withdraw consent at any stage, including after the data has been shared.

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21. This paragraph provides that when the archbishop or bishop, as the case may be, is considering whether to give a direction for a risk assessment the DSO must give advice in writing as to the factors which should be considered in that decision.

**Paragraph 3 – Person who will carry out a risk assessment**

22. Under paragraph 3 the default position is that a risk assessment will be carried out by the DSO personally, or where the DSO considers it necessary, the DSO may appoint another person to carry out the assessment. This might arise in cases of conflict where the DSO personally knows the person being assessed.
23. The DSO will only be able to appoint an external assessor from a list compiled and maintained for that purpose by the National Safeguarding Team.
24. Where an external assessor is appointed, the contract must include a provision to the effect that if the external assessor fails to comply with these Regulations, then the failure is enforceable as a breach of contract.

**Paragraph 4 – Procedure for commencing assessment**

25. Paragraph 4 provides that the DSO, in consultation with the bishop must prepare the terms of reference for the assessment. These must include an outline of the timings which it is anticipated that each stage of the assessment will take and an estimated date for completion of the final report.
26. Where an external assessor is appointed by the DSO that person must be provided with the terms of reference and any other information relevant to the assessment.
27. The person being assessed must be given by the DSO a written statement which contains the following – the terms of reference; the reasons for requiring the assessment; the identity of the assessor; the process by which the assessment will be carried out; a reminder to the person being assessed of their right to request a review of the direction to undergo the assessment; and notice that the DSO may give a copy of the written assessment, either in full or in a redacted form, to another person or body.

**Paragraph 5 – Draft written report**

28. Paragraph 5 sets out what an assessor must include in the draft report.
29. The report must continue to set out the assessor's opinion on the nature and likely extent of any safeguarding risk and recommendations on how to address or manage any such risk.
30. If the assessor considers any matter the facts of which are in dispute, the report must set out the nature and extent of the dispute, but the assessor must not make any finding on any fact which is in dispute.

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31. Where an external assessor has completed the draft report, the DSO must be given a copy.

**Paragraph 6 – Right to review draft written report**

32. Paragraph 6 deals with the process by which the cleric being assessed may put questions or written submissions to the assessor about the report.

33. The cleric to whom the assessment relates is permitted to do so within 14 days of receiving the report and the assessor must give written answer to any questions within 14 days thereafter.

34. The cleric thereafter is permitted another 14 days to make any written submissions on the answers given by the assessor but may otherwise not put any other questions or submissions about the draft report to the assessor.

35. Having considered the questions and submissions the assessor must then prepare a final report with any amendments the assessors considered appropriate.

36. Where an external assessor has completed the final report, the DSO must be given a copy.

37. The DSO (both in cases where the DSO is the assessor or where an external assessor is used) may extend each of the 14 days period if the DSO considers that to be reasonable in all the circumstances.

**Paragraph 7 – Final report**

38. Paragraph 7 provides that the DSO must give the final report to the bishop of the diocese. Further, that the DSO may share the report with any person if to do so is necessary for the purposes of managing any safeguarding risk identified in the report. For example, the report would be shared with an archdeacon or churchwardens or chair of school governors.

39. The DSO may also give a copy of the final report to the police or other statutory authority.

40. When sharing the report with any person the DSO must first consult the diocesan registrar and have due regard to the registrar's advice.

**Paragraph 8 – Personal Information**

41. Paragraph 8 sets out that prior to sharing a draft or final report with any person the DSO must consider what personal information is contained within the report and must at all times act in accordance with data protection law. This may include redacting parts of the report. Further guidance will be set out in the Managing Allegations Code of Practice.

42. In considering the relevant requirements under data protection law the DSO must consult the diocesan registrar and have due regard to the registrar's advice.

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**Paragraph 9 – Risk assessments of bishops and archbishops**

**43.** Paragraph 9 provides for certain references in the regulations to be read differently where the assessment relates to a bishop or archbishop, including reading ‘DSO’ as ‘overseeing body’, which means the NST.

**44.** For the purposes of regulation 7 and 8, in place of the diocesan registrar the NST must consult the data protection officer, who is the relevant official of the NCIs who has responsibility for advising on data protection.

**Paragraph 10 – Interpretation**

**45.** Paragraph 10 defined a number of words and phrases as well providing that the Interpretation Act 1978 applies to the Regulations.

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