

CLERGY DISCIPLINE MEASURE 2003
as amended by the Clergy Discipline (Amendment) Measure 2013¹

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Clergy Discipline Measure 2003

2003 No. 3

A Measure passed by the General Synod of the Church of England to amend the law relating to ecclesiastical discipline, to amend section 3 of the Ecclesiastical Jurisdiction Measure 1963 and section 5(5) of the Ecclesiastical Judges and Legal Officers Measure 1976, and for purposes connected therewith. [10th July 2003]

Introductory

1 Duty to have regard to bishop's role

Any body or person on whom functions in connection with the discipline of persons in Holy Orders are conferred by this Measure shall, in exercising those functions, have due regard to the role in that connection of the bishop or archbishop who, by virtue of his office and consecration, is required to administer discipline.

2 Disciplinary tribunals

Where a complaint is to be referred under this Measure to a disciplinary tribunal the tribunal (to be called the bishop's disciplinary tribunal) shall be constituted for the diocese in question in accordance with section 22 below to deal with the complaint.

3 Clergy Discipline Commission

- (1) There shall be a body (to be called the Clergy Discipline Commission) consisting of not more than twelve persons appointed by the Appointments Committee of the Church of England including at least –
 - (a) two persons from each House of the General Synod;
 - (b) two persons who have either a seven years general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge.
- (2) The Appointments Committee shall, after consultation with the Dean of the Arches and Auditor, appoint a member of the Commission to be the chairman of the Commission and also a member to be the deputy chairman, being members who have the qualifications referred to in subsection (1)(b) above.
- (3) The Commission shall exercise the functions conferred on it by this Measure and in addition shall have the following duties –

- (a) to give general advice to disciplinary tribunals, the courts of the Vicars-General, bishops and archbishops as to the penalties which are appropriate in particular circumstances;
- (b) to issue codes of practice and general policy guidance to persons exercising functions in connection with clergy discipline;
- (c) to make annually to the General Synod through the House of Bishops thereof a report on the exercise of its functions during the previous year.

4 President of tribunals

- (1) The chairman and deputy chairman of the Commission shall be the president of tribunals and the deputy president respectively for the purposes of this Measure.
- (2) The president of tribunals shall exercise the functions conferred on him by this Measure and in addition shall have the following duties –
 - (a) to issue practice directions;
 - (b) to act as the chairman of a disciplinary tribunal where, in his opinion, important points of law or principle are involved;
 - (c) to exercise such other functions as may be prescribed.
- (3) *Subject to subsection (4) below, the deputy president of tribunals shall act for the president when the president is absent or is unable or unwilling to act.*
- (4) *The president or deputy president of tribunals may select any person who may be appointed as the chairman of a disciplinary tribunal under section 22(1) below to act in his place when he is absent or unable or unwilling to act.*²

5 Registrar of tribunals

- (1) The archbishops of Canterbury and York shall each for his province, after consultation with the president of tribunals, appoint a person to be the registrar of tribunals for the province for the purposes of this Measure.
- (2) A person so appointed shall be a person who has a general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41).
- (3) The person holding the office of registrar of tribunals for a province shall vacate that office on the date on which he attains the age of seventy years or such earlier age as may be prescribed by regulations made by the House of Bishops of the General Synod under section 5 of the Ecclesiastical Judges and Legal Officers Measure 1976 (1976 No. 2).
- (4) The registrar of tribunals for a province may resign his office by instrument in writing under his hand addressed to, and served on, the archbishop of the province and the instrument shall specify the date, being a date not less than

² Section 4(4) was inserted with effect from 1st February 2014.

twelve months after the service of the instrument or such earlier date as the archbishop may allow, on which the resignation is to take effect.

- (5) The appointment of a person as registrar of tribunals for a province may be terminated by an instrument in writing under the hand of the archbishop of the province (after consultation with the president of tribunals) addressed to, and served on, that person, and the instrument shall specify the date, being a date not less than twelve months after the date of service of the instrument, on which the appointment is to terminate.
- (6) The registrar of tribunals for a province shall exercise the functions conferred on him by this Measure and in addition shall have the following duties –
 - (a) to direct and supervise the general administration of disciplinary tribunals in the province;
 - (b) to exercise such other functions as may be prescribed.
- (7) If the person holding the office of registrar of tribunals for a province is for any reason unable or unwilling to perform the duties of a registrar or it would be inappropriate for him to perform those duties, the registrar of tribunals for the other province shall perform those duties and, for that purpose, shall have all the powers and duties of the registrar of the first-mentioned province.

6 Jurisdiction in disciplinary proceedings

- (1) A disciplinary tribunal constituted for a diocese has jurisdiction to hear and determine disciplinary proceedings under this Measure against a priest or deacon –
 - (a) who, when the misconduct complained of was alleged to have been committed, held preferment in the diocese or, subject to subsection (3) below, was resident therein; or
 - (b) who is alleged to have officiated as a minister in the diocese without authority.
- (2) The Vicar-General's court of each of the provinces of Canterbury and York constituted in accordance with the provisions of this Measure has jurisdiction to hear and determine disciplinary proceedings under this Measure –
 - (a) against any bishop who, when the misconduct complained of was alleged to have been committed, held preferment in the province or, subject to subsection (3) below, was resident therein; or
 - (b) against any bishop who is alleged to have officiated as a minister in the province without authority; or
 - (c) against the archbishop of the other province.
- (3) Where disciplinary proceedings in respect of any matter are instituted under section 10 below against –
 - (a) a priest or deacon in the diocese in which he holds or held preferment or in which he is alleged to have officiated as a minister without authority, or
 - (b) a bishop in the province in which he holds or held preferment or in which he is alleged to have officiated without authority,

no such proceedings in respect of the same matter shall be instituted in any other diocese or the other province, as the case may be, on the basis of residence therein and any such proceedings previously instituted on that basis shall be discontinued.

- (4) Where disciplinary proceedings in respect of any matter are instituted under section 10 below against –
 - (a) a priest or deacon in the diocese in which he is alleged to have officiated without authority, or
 - (b) a bishop in the province in which he is alleged to have officiated without authority,

no such proceedings in respect of the same matter shall be instituted in any other diocese or the other province, as the case may be, on the basis of preferment therein and any such proceedings previously instituted on that basis shall be discontinued.

- (5) In this section and elsewhere in this Measure “preferment” has the meaning assigned to it by section 43 below.

Disciplinary proceedings concerning matters not involving
doctrine, ritual or ceremonial

7 Application

- (1) The following provisions of this Measure shall have effect for the purpose of regulating proceedings against a clerk in Holy Orders who is alleged to have committed an act or omission other than one relating to matters involving doctrine, ritual or ceremonial, and references to misconduct shall be construed accordingly.
- (2) Proceedings in relation to matters involving doctrine, ritual or ceremonial shall continue to be conducted in accordance with the 1963 Measure.

8 Misconduct

- (1) Disciplinary proceedings under this Measure may be instituted against any archbishop, bishop, priest or deacon alleging any of the following acts or omissions –
 - (a) doing any act in contravention of the laws ecclesiastical;
 - (b) failing to do any act required by the laws ecclesiastical;
 - (c) neglect or inefficiency in the performance of the duties of his office;
 - (d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.
- (2) In the case of a minister licensed to serve in a diocese by the bishop thereof, the licence shall not be terminated by reason of that person’s misconduct otherwise than by way of such proceedings.

- (3) *Subject to subsection (4) below, no proceedings in respect of unbecoming or inappropriate conduct shall be taken in respect of the lawful political opinions or activities of any archbishop, bishop, priest or deacon.*
- (4) *Notwithstanding subsection (3) above, it shall be unbecoming or inappropriate conduct for any archbishop, bishop, priest or deacon to be a member of, or to promote, or express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to the equality of persons or groups of different races.*
- (5) *It shall be the duty of the House of Bishops to take appropriate steps to publish any declaration made under subsection (4) above.*
- (6) *Without prejudice to subsection (5) above, the House of Bishops shall lay any declaration made under subsection (4) above before the General Synod and, if 25 or more members of the Synod give notice in accordance with its Standing Orders that they wish the declaration to be debated, it shall come into force on the date on which the declaration is approved by the General Synod.*
- (7) *Any declaration made under subsection (4) above which is not debated by the General Synod in accordance with subsection (6) above shall come into force at the expiry of the period required by the Standing Orders for the giving of the notice under subsection (6).*
- (8) *Any declaration made under subsection (4) above may be revoked by a resolution of the House of Bishops and subsections (5), (6) and (7) above shall apply to any such resolution as they apply to a declaration under subsection (4).*
- (9) *Any declaration made by the House of Bishops under subsection (4) above shall require the assent of a majority of not less than two-thirds of the members of the House present and voting.*
- (10) *In subsection (4) above “races” shall be construed in accordance with section 9 of the Equality Act 2010.³*

9 Limitation of time for institution of proceedings

No disciplinary proceedings under this Measure shall be instituted unless the misconduct in question, or the last instance of it in the case of a series of acts or omissions, occurred within the period of one year ending with the date on which proceedings are instituted:

Provided that, when the misconduct is one for which the person concerned has been convicted either on indictment or summarily, proceedings may be

³ Section 8(4) to (10) was inserted with effect from 1st February 2014.

instituted within twelve months of the conviction becoming conclusive, notwithstanding that the aforesaid period of one year has elapsed:

And provided further that the president of tribunals may, if he considers that there was good reason why the complainant did not institute proceedings at an earlier date, after consultation with the complainant and the respondent, give his written permission for the proceedings to be instituted after the expiry of the said period of one year.

10 Institution of proceedings

- (1) Disciplinary proceedings under this Measure may be instituted against any person who is subject to the jurisdiction of a disciplinary tribunal or the Vicar-General's court by virtue of section 6 above, by way of complaint made in writing, only as follows –
 - (a) in the case of a priest or deacon, by –
 - (i) a person nominated by the parochial church council of any parish which has a proper interest in making the complaint, if not less than two-thirds of the lay members of the council are present at a duly convened meeting of the council and not less than two-thirds of the lay members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) a churchwarden of any such parish; or
 - (iii) any other person who has a proper interest in making the complaint;
 - (b) in the case of a bishop, by –
 - (i) a person nominated by the bishop's council of the diocese concerned, if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) any other person who has a proper interest in making the complaint;
 - (c) in the case of an archbishop by –
 - (i) a person nominated by the archbishop's council of his diocese if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) any other person who has a proper interest in making the complaint.
- (2) A complaint under this section shall be laid –
 - (a) in the case of a priest or deacon, before the diocesan bishop concerned,
 - (b) in the case of a bishop, before the archbishop concerned,
 - (c) in the case of an archbishop, before the other archbishop,

and references in the following provisions of this Measure to the bishop by whom a complaint is received shall, in the case of proceedings against a bishop or archbishop, be construed as references to the archbishop or other archbishop respectively.

- (3) A complaint made under this section shall be accompanied by written particulars of the alleged misconduct, and written evidence in support of the complaint shall be sent to the bishop or archbishop, as the case may be, either with the complaint or at such later time as he may allow.

11 Preliminary scrutiny of complaint

- (1) When a complaint in writing has been made in accordance with section 10 above it shall be referred in the first instance to the registrar of the diocese or province concerned, as the case may be, who shall thereupon scrutinise the complaint in consultation with the complainant with a view to –
 - (a) forming a view as to whether or not the parochial church council or other person making the complaint has a proper interest in doing so or, if the complainant purports to be a churchwarden, establishing that he is such, and
 - (b) forming a view as to whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with the following provisions of this Measure,

and the registrar shall notify the respondent that the complaint has been referred to him.

- (2) Having scrutinised the complaint the registrar shall, within the period of twenty-eight days following its receipt by him or such longer period as he considers to be justified in the particular circumstances of the case, send a written report to the bishop by whom the complaint was received setting out the registrar's views and thereupon the bishop shall deal with the complaint in accordance with the following provisions of this Measure, having regard to the registrar's report:

Provided that the period of twenty-eight days referred to above shall not be extended as aforesaid more than once.

- (3) On receipt of the registrar's report the bishop may dismiss the complaint and, if he does so, he shall give written notice of the dismissal to the complainant and the respondent, together with a copy of the report.
- (4) On receipt of a notice of dismissal the complainant may request the president of tribunals to review the dismissal, and the president may then uphold the dismissal or, if he considers the dismissal to be plainly wrong, reverse it and direct the bishop to deal with the complaint in accordance with section 12 below.

- (5) Where the registrar proposes to extend the period of twenty-eight days referred to in subsection (2) above, he shall, before doing so, consult the complainant and the respondent.
- (6) The registrar may delegate any or all of his functions under this section to such person as he may designate.

12 Courses available to bishop

- (1) If the complaint is not dismissed under section 11(3) above the bishop shall, within the period of twenty-eight days following the receipt by him of the registrar's report under section 11(2) above or the president of tribunal's direction under section 11(4), as the case may be, or such longer period as he considers to be justified in the particular circumstances of the case, determine which of the following courses is to be pursued –
 - (a) he may take no further action, in which case the provisions of section 13 below apply; or
 - (b) he may, if the respondent consents, direct that the matter remain on the record conditionally, in which case the provisions of section 14 below apply; or
 - (c) he may direct that an attempt to bring about conciliation in accordance with section 15 below is to be made; or
 - (d) he may impose a penalty by consent in accordance with section 16 below; or
 - (e) he may direct that the complaint is to be formally investigated in accordance with section 17 below.
- (2) Where the bishop proposes to extend the period of twenty-eight days referred to in subsection (1) above he shall, before doing so, consult the complainant and the respondent.

13 No further action

- (1) Where the bishop determines that there is to be no further action the following provisions of this section shall apply.
- (2) The bishop shall reduce his determination to writing and shall give a copy of it to the complainant and the respondent.
- (3) The complainant may refer the complaint to the president of tribunals and, if the president considers that the bishop's determination was plainly wrong, he may direct the bishop to pursue such of the courses specified in section 12(1)(b) to (e) above as he considers appropriate, in which case the bishop shall proceed accordingly.

14 Conditional deferment

- (1) Where the bishop, with the consent of the respondent, determines that the matter is to be recorded conditionally the following provisions of this section shall apply.

- (2) The complaint and the bishop's determination shall be notified to the archbishop concerned and remain on a record maintained by the diocesan registrar concerned for such period not exceeding five years as the bishop may determine and, subject to subsection (3) below, no further action shall be taken.
- (3) Notwithstanding the provisions of section 9 above, if another complaint is made under section 10 above against the respondent and that complaint is dealt with under paragraph (c), (d) or (e) of section 12(1) above, the recorded complaint may be dealt with under any of those paragraphs together with the other complaint.
- (4) The bishop shall reduce his determination to writing and give a copy of it to the complainant and the respondent. He shall also supply them with a statement explaining the effect of subsections (2) and (3) above.

15 Conciliation

- (1) Where the bishop determines that an attempt to bring about conciliation is to be made he shall afford the complainant and the respondent an opportunity to make representations and, if both of them agree to the appointment of a conciliator, an appointment shall be made under subsection (2) below.
- (2) The appointment of a conciliator shall be by the bishop with the agreement of the complainant and the respondent.
- (3) The bishop shall not appoint any person to be a conciliator unless he is satisfied that there is no reason to question the impartiality of that person.
- (4) A conciliator appointed under this section shall use his best endeavours to bring about a conciliation between the complainant and the respondent and –
 - (a) if, within the period of three months following his appointment or such further period as he may, with the agreement of the complainant and the respondent, allow a conciliation is brought about, he shall submit a report on the case to the bishop, together with such recommendations as he may wish to make;
 - (b) if a conciliation is not brought about but the complainant and the respondent agree that another conciliator should be appointed, the bishop may appoint that other person as the conciliator for the purposes of this section;
 - (c) if a conciliation is not brought about and the complainant and the respondent do not agree as aforesaid, he shall refer the matter back to the bishop.
- (5) If –
 - (a) the complainant and the respondent do not agree to the appointment of a conciliator or as to the person to be appointed, or
 - (b) the matter is referred back to the bishop by the conciliator under subsection (4)(c) above,

the bishop shall proceed to deal with the complaint under paragraph (a), (b), (d) or (e) of section 12(1) above.

16 Penalty by consent

- (1) Where the bishop considers that the imposition of a penalty by consent might be appropriate, he shall afford the complainant and the respondent an opportunity to make representations and, if the respondent consents to the imposition of a penalty under this section and he and the bishop agree as to the penalty, the bishop shall, subject to subsection (2) below, proceed accordingly and thereafter no further step shall be taken in regard thereto.
- (2) Where it is agreed that prohibition for the life or resignation is the appropriate course the respondent or the bishop may, within the period of seven days following the date of the agreement, withdraw his agreement and the prohibition or resignation shall not be implemented in pursuance of this section.
- (3) If the consent of the respondent to the imposition of a penalty under this section is not obtained or he and the bishop are unable to reach agreement as to the nature of the penalty, the bishop shall proceed to deal with the complaint under paragraph (e) of section 12(1) above.
- (3A) *At any time after the bishop has directed, under section 12(1)(e) above, that the complaint be formally investigated in accordance with section 17 below or after the president of tribunals has referred the complaint to a disciplinary tribunal, the bishop and the respondent may, if the respondent admits the misconduct which is the subject of the complaint, agree to the imposition of a penalty under this section and the bishop shall, subject to subsection (2) above, proceed accordingly and thereafter no further step shall be taken in regard thereto.*⁴
- (4) The bishop shall notify the complainant of any action taken in pursuance of this section and shall also notify the archbishop of the province concerned and the registrar of the diocese concerned of any penalty agreed in pursuance of subsection (1) above.

17 Formal investigation

- (1) Where the bishop directs that the complaint is to be formally investigated, he shall refer the matter to the designated officer and it shall then be the duty of that officer to cause inquiries to be made into the complaint.
- (2) After due inquiries have been made into the complaint the designated officer shall refer the matter to the president of tribunals for the purpose of deciding whether there is a case to answer in respect of which a disciplinary tribunal or the Vicar-General's court, as the case may be, should be requested to adjudicate.

⁴ Section 16(3A) was inserted with effect from 1st February 2014.

- (3) If the president of tribunals decides that there is a case for the respondent to answer he shall declare that as his decision and refer the complaint to a disciplinary tribunal or the Vicar-General's court, as the case may be, for adjudication.
- (4) If the president of tribunals decides that there is no case for the respondent to answer he shall declare his decision, and thereafter no further steps shall be taken in regard thereto.
- (5) The president of tribunals shall reduce his decision to writing and shall give a copy of it to the complainant, the respondent, the bishop and the designated officer.

18 Conduct of proceedings

- (1) In disciplinary proceedings under this Measure it shall be the duty of the designated officer or a person duly authorised by him to conduct the case for the complainant.
- (2) In any such proceedings the president of tribunals may direct –
 - (a) that the complaint is to be withdrawn, whereupon no further action shall be taken in the proceedings; or
 - (b) that an attempt or further attempt to bring about conciliation is to be made, whereupon the provisions of section 15 above shall apply.
- (3) In any such proceedings –
 - (a) the standard of proof to be applied by the tribunal or court shall be the same as in proceedings in the High Court exercising civil jurisdiction;
 - (b) the determination of any matter before the tribunal or court shall be according to the opinion of the majority of the members thereof and shall be pronounced in public together with its reasons therefor;
 - (c) the hearing shall be in private, except that the tribunal or court, if satisfied that it is in the interests of justice so to do or the respondent so requests, shall direct that the hearing shall be in public in which case the tribunal or court may, during any part of the proceedings, exclude such person or persons as it may determine.

19 Imposition of penalty

- (1) Upon a finding by a disciplinary tribunal or the Vicar-General's court in disciplinary proceedings that the respondent committed the misconduct complained of, the tribunal or court may –
 - (a) impose on the respondent any one or more of the penalties mentioned in section 24 below; or
 - (b) defer consideration of the penalty, and for that purpose may adjourn the proceedings; or
 - (c) impose no penalty.

- (2) Before imposing a penalty the disciplinary tribunal or court may invite –
- (a) in the case of a disciplinary tribunal, the bishop of the diocese concerned, or
 - (b) in the case of the Vicar-General’s court, the archbishop concerned or, if the respondent is an archbishop, the other archbishop,

to express in writing his views as to the appropriate penalty and the tribunal or court shall have regard to any such views in imposing the penalty, if any and the views of the bishop or archbishop, as the case may be, shall be conveyed in writing to the respondent:

Provided that, if the bishop or archbishop has given evidence in the proceedings, he shall not be consulted.

- (3) In this section any reference to a penalty includes a reference to an order for conditional discharge under section 25 below.

20 Right of appeal⁵

- (1) *Subject to the following provisions of this section*, in disciplinary proceedings under this Measure –
- (a) the respondent may appeal against any penalty imposed on him, and
 - (b) the respondent on a question of law or fact, and the designated officer, on a question of law, may appeal against any finding of the disciplinary tribunal or the Vicar-General’s court,

to the Arches Court of Canterbury (where the proceedings take place in the province of Canterbury) or the Chancery Court of York (where the proceedings take place in the province of York).

- (1A) *An appeal by the respondent or the designated officer may only be brought with the leave of the disciplinary tribunal or the Vicar-General’s court, as the case may be, or the appeal court.*

- (1B) *Any application for leave of the appeal court under subsection (1A) –*
- (a) *shall be heard jointly by the Dean of the Arches and Auditor and one judge appointed by the president of tribunals for the purpose of those proceedings from among the persons serving on the provincial panel of the relevant province, who shall be a lay person in the case of an application by the respondent and a person in Holy Orders in the case of an application by the designated officer;*
 - (b) *may, if the Dean of the Arches and Auditor so directs, be determined without a hearing; and*
 - (c) *shall be granted if at least one of the judges considers either that the appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard.*

⁵ Section 20(1A) to 20(1C) was inserted with effect from 1st February 2014 but does not have effect in relation to any complaint made before that date.

- (1C) *If the disciplinary tribunal or the court grants the application for leave, it may direct that the issues to be heard on the appeal be limited in such way as the tribunal or the court may specify.*
- (2) *Subject to subsection (3) below, proceedings on an appeal under subsection (1) above shall be heard and disposed of by the Dean of the Arches and Auditor sitting with two persons in Holy Orders and two lay persons appointed by the president of tribunals for the purpose of those proceedings from among the persons nominated to serve on the provincial panel of the relevant province otherwise than by the bishop of the diocese concerned.*
- (3) *In the case of an appeal from a decision of the Vicar-General's court –*
 (a) *one of the persons in Holy Orders shall be in Episcopal Orders, whether or not that person has been nominated to serve on the provincial panel mentioned in subsection (2) above, and*
 (b) *where the appeal is by an archbishop, subsection (2) shall have effect as if the reference to persons nominated to serve on the provincial panel otherwise than by the bishop of the diocese concerned were a reference to persons (other than the person in Episcopal Orders) nominated to serve on the provincial panel of the other province.*
- (4) *Before the president of tribunals appoints a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) or on an application for leave to appeal under subsection (1A) above he shall satisfy himself that there is no reason to question the impartiality of that person.*
- (5) *Before appointing a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) or on an application for leave to appeal under subsection (1A) above the president of tribunals shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.*

Composition of tribunal and Vicar-General's court

21 Provincial panels

- (1) It shall be the duty of the Clergy Discipline Commission to compile and maintain for each province, in accordance with the provisions of subsection (2) below, a list (hereinafter referred to as “the provincial panel”) of persons available for appointment under the following provisions of this Measure as members of a disciplinary tribunal or of the Vicar-General's court.
- (2) Each provincial panel shall contain the names of –
 (a) two lay persons from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who are resident in the diocese and are on the electoral roll of a parish in the diocese or on the community roll of a cathedral which is not a parish church;

- (b) two persons in Holy Orders from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who have served in Holy Orders for at least seven years and are resident in the diocese;
 - (c) ten persons nominated by the archbishop of the relevant province, being persons who have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge;
 - (d) such persons as may be nominated under subsection (3) below.
- (3) The archbishop of the relevant province may also nominate for inclusion on the provincial panel –
- (a) not more than five persons who are resident in the province and are on the electoral roll of a parish in the province or on the community roll of a cathedral which is not a parish church; and
 - (b) not more than five persons who have served in Holy Orders for at least seven years and reside in the province.
- (4) No *lay* person who is not an actual communicant, within the meaning of rule 54(1) of the Church Representation Rules (1969 No. 2 Sch. 3), shall be nominated to serve on the provincial panel.
- (5) Persons nominated to serve on the provincial panel shall so serve for a period of six years, and on retiring from the panel shall be eligible to be nominated to serve for not more than one further period of six years:

Provided that, of the persons nominated to serve on the provincial panel on the first occasion after the passing of this Measure, half of those nominated under paragraph (a) of subsection (2) above, half of those nominated under paragraph (b), half of those nominated under paragraph (c) and half of those nominated under subsection (3) above shall retire from the panel after serving for a period of three years, those retiring being determined by lot.

- (6) Where the period of service of a person nominated to serve on the provincial panel expires while he is a member of a disciplinary tribunal or of the Vicar-General's court to which proceedings under this Measure are referred, he shall continue to be a member of the tribunal or court until the completion of the proceedings.
- (7) Where a casual vacancy occurs on the provincial panel the Archbishop of the relevant province or the bishop of the relevant diocese, as the case may be, may nominate a person to fill the vacancy, and the provisions of subsection (2) and (4) above, relating to qualifications and consultations shall apply for the purposes of this subsection as they applied for the purposes of the nomination of the person whose place he takes on the panel.
- (8) Any person nominated to fill a casual vacancy shall serve only for the unexpired term of service of the person whose place he takes on the panel.

22 Disciplinary tribunals

- (1) A disciplinary tribunal shall consist of five members as follows –
 - (a) the chairman, who shall be the president of tribunals or such other person as he may appoint as chairman from those nominated under section 21(2)(c) above to serve on the relevant provincial panel;
 - (b) two lay persons appointed by the president of tribunals from those nominated under section 21(2)(a) or (3)(a) above otherwise than by the bishop of the diocese concerned to serve on the relevant provincial panel; and
 - (c) two persons in Holy Orders appointed by the president of tribunals from those nominated under section 21(2)(b) or (3)(b) above otherwise than by the bishop of the diocese concerned to serve on the relevant provincial panel.
- (2) The president of tribunals shall not appoint any person to be a member of a disciplinary tribunal unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

23 Vicar-General's court⁶

- (1) The Vicar-General's court, when exercising its jurisdiction in disciplinary proceedings under this Measure against a bishop, shall consist of five members as follows –
 - (a) the chairman, who shall be the Vicar-General of the relevant province unless he declares himself to be personally acquainted with the complainant or the respondent *or he is otherwise unable to act*, in which case the president of tribunals shall appoint a person to be the chairman from those nominated under section 21(2)(c) above to serve on the provincial panel *of either province*;
 - (b) two persons in Holy Orders appointed by the president of tribunals, *of whom one shall be in Episcopal Orders and the other shall be appointed from among those nominated to serve on the provincial panel of the province other than that in which the bishops serves*;
 - (c) two lay persons appointed by the president of tribunals from among those nominated under section 21(2)(a) or 3(a) above to serve on the provincial panel of the province other than that in which the bishop serves.
- (2) The Vicar-General's court, when exercising its jurisdiction in disciplinary proceedings under this Measure against an archbishop of a province, shall consist of five members as follows –
 - (a) the chairman, who shall be the Vicar-General of the other province unless he declares himself to be personally acquainted with the complainant or the respondent *or he is otherwise unable to act*, in which case the president of tribunals shall appoint a person to be

⁶ As amended with effect from 1st February 2014.

- chairman from those nominated under section 21(2)(c) above to serve on the provincial panel of the other province;
- (b) two persons in Holy Orders appointed by the president of tribunals, *of whom one shall be in Episcopal Orders and the other shall be appointed from among those nominated to serve on the provincial panel of the other province;*
 - (c) two lay persons appointed by the president of tribunals from among those nominated under section 21(2)(a) or 3(a) above to serve on the provincial panel of the other province.
- (3) The president of tribunals shall not appoint any person to be a member of the Vicar-General's court of a province unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

Penalties

24 Types of penalty

- (1) One or more of the following penalties may be imposed on a respondent upon a finding that he has committed any misconduct, namely –
 - (a) prohibition for life, that is to say prohibition without limit of time from exercising any of the functions of his Orders;
 - (b) limited prohibition, that is to say prohibition for a specific time from exercising any of the functions of his Orders;
 - (c) removal from office, that is to say, removal from any preferment which he then holds;
 - (d) in the case of a minister licensed to serve in a diocese by the bishop thereof, revocation of the licence;
 - (e) injunction, that is to say, an order to do or to refrain from doing a specified act;
 - (f) rebuke.
- (2) No penalty of removal from office imposed on an archbishop or bishop or on any person holding any preferment the right to appoint to which is vested in Her Majesty (not being a parochial benefice) shall have effect unless and until Her Majesty by Order in Council confirms the penalty.

25 Conditional discharge

- (1) Where, upon a finding that the respondent has committed any misconduct, the disciplinary tribunal or Vicar-General's court, as the case may be, is of opinion, having regard to the circumstances including the nature of the misconduct and the character of the respondent, that it is inexpedient to impose a penalty it may make an order discharging him subject to the condition that he commits no misconduct during such period not exceeding two years from the date of the order as may be specified in the order.

- (2) Before making an order under subsection (1) above the tribunal or court shall explain to the respondent in ordinary language that if he commits further misconduct during the period specified in the order a penalty may be imposed for the original misconduct.
- (3) Where, under subsection (4) below, a penalty is imposed on a person conditionally discharged under subsection (1) above for the misconduct in respect of which the order for conditional discharge was made, that order shall cease to have effect.
- (4) If a person in whose case an order has been made under subsection (1) above is found, in disciplinary proceedings under this Measure, to have committed misconduct during the period specified in the order, the disciplinary tribunal or the Vicar-General's court, as the case may be, may deal with him for the misconduct for which the order was made in any manner in which it could deal with him if it had just found that he had committed that misconduct.

26 Removal of prohibition for life and deposition

- (1) Where by virtue of anything done under this Measure or the 1963 Measure a priest or deacon is prohibited for life or deposed he may make an application to the archbishop concerned for the prohibition or deposition to be nullified on the grounds –
 - (a) that new evidence has come to light affecting the facts on which the prohibition or deposition was based; or
 - (b) that the proper legal procedure leading to the prohibition or deposition was not followed.
- (2) If the archbishop, on an application made in accordance with subsection (1) above, considers that the prohibition or deposition was not justified he may, after consultation with the Dean of the Arches and Auditor, declare that the prohibition or deposition be nullified, whereupon it shall be treated for all purposes in law as never having been imposed.
- (3) This section shall apply to archbishops and bishops who are prohibited for life or deposed as it applies to priests and deacons who are prohibited for life or deposed, with the following adaptations –
 - (a) in the case of an archbishop, the references to the archbishop concerned shall be read as references to the Dean of the Arches and Auditor and the reference to consultation with him shall be omitted;
 - (b) in the case of a bishop, the references to the archbishop concerned shall be read as references to the archbishop of the other province.

27 Removal of limited prohibition

Where by virtue of anything done under this Measure or the 1963 Measure an archbishop, bishop, priest or deacon is prohibited from exercising functions for a specific time he and the archbishop or bishop of the province or diocese concerned (or his successor in office) acting jointly may make an application to the Dean of the Arches and Auditor sitting with the two

Vicars-General for the removal of the prohibition; and on receiving such an application they may make an order removing the prohibition, whereupon he shall be eligible for any preferment.

28 Restoration on pardon

Where by virtue of anything done under this Measure an archbishop, bishop, priest or deacon is prohibited from exercising functions or removed from office his incapacities shall cease if he receives a free pardon from the Crown and he shall be restored to any preferment he previously held if it has not in the meantime been filled.

29 Disobedience to penalty etc.

Any person (including a person deposed from Holy Orders under the 1963 Measure) who performs in the Church of England any function which, under a penalty imposed on him under this Measure or a censure imposed on him under the 1963 Measure, he is not permitted to perform commits an act of misconduct under this Measure and, in the case of a person deposed from Holy Orders, disciplinary proceedings under this Measure may be instituted against him in respect of the misconduct as if he had not been deposed.

Proceedings in secular courts

30 Convictions for criminal offences and matrimonial orders, etc.: priests and deacons

- (1) If a person who is a priest or deacon –
- (a) is convicted, –
 - (i) *whether in England or elsewhere, of any offence for which a sentence of imprisonment (including one which is not implemented immediately) is passed on him, or*
 - (ii) *of any offence, other than a summary offence, committed in England and Wales,⁷ or*
 - (b) has a decree of divorce or an order of *judicial* separation made against him following a finding of adultery, behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent or desertion and, in the case of divorce, the decree has been made absolute, *or*
 - (c) *is included in a barred list,⁸*

he shall be liable without further proceedings to a penalty of removal from office or prohibition (whether for life or limited) or both.

- (1A) *In this Measure “barred list” means the children’s barred list or the adults’ barred list established in accordance with section 2(1) of and Schedule 3 to the Safeguarding Vulnerable Groups Act 2006.*

⁷ Section 30(1)(a)(ii) does not have effect in relation to any conviction occurring before 1st February 2014.

⁸ Section 30(1)(c) and section 30(1A) were inserted with effect from 1st February 2014.

- (2) Where a person is liable to a penalty of removal from office or prohibition or both by virtue of subsection (1) above and the bishop of the relevant diocese proposes to impose such a penalty, he shall, after consultation with the president of tribunals, inform that person in writing of the proposal, together with an invitation to send representations in writing to the bishop within the period of twenty-eight days. On the expiry of that period the bishop shall decide whether or not to impose the penalty and shall inform that person in writing of the decision. If the decision is to impose the penalty, that person may request the archbishop of the relevant province to review the decision and upon such a review the archbishop may uphold or reverse the decision after consideration of all the circumstances, including any representations made under this subsection.
- (3) *Subject to subsection (3A) below, a penalty shall not be imposed under subsection (1)(a) or (b) after the expiry of the period of two years beginning with the date on which the conviction becomes conclusive or, as the case may be, the decree absolute or order is made.*
- (3A) *The president of tribunals may, on application by the bishop of the relevant diocese, extend the period of two years referred to in subsection (3) above if, after consultation with the priest or deacon concerned, he is satisfied that the bishop did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.*⁹
- (4) Where a penalty is to be imposed under this section, it shall be imposed by the bishop of the relevant diocese, and before imposing it the bishop shall require the registrar of his diocese to give (if it is practicable to do so) not less than fourteen days notice in writing to the priest or deacon concerned of the time and place at which the penalty will be imposed and if the priest or deacon appears at that time and place he shall be entitled to be present when the penalty is imposed.
- (5) When imposing a penalty under this section the bishop shall be attended by the registrar of this diocese. The penalty shall be reduced to writing and a copy thereof shall be sent to the archbishop of the province concerned and to the registrar of the diocese concerned.
- (6) The functions exercisable under this section by an archbishop shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercised by the other archbishop.
- (7) In this section “relevant diocese” means –
 - (a) the diocese in which the priest or deacon, in relation to whom a penalty may be imposed under this section, holds preferment at the date on which the *conviction* which justifies the imposition of the penalty becomes conclusive *or, as the case may be, the date of the*

⁹ Section 30(3A) was inserted with effect from 1st February 2014.

decree absolute of divorce or the date of the order of judicial separation; or

- (b) if at that date he is not holding preferment, but is residing in a diocese, the diocese in which he is residing at that date; or
- (c) if at that date he neither holds preferment nor resides in a diocese, the diocese in which he last held preferment before that date or, in the case of a priest or deacon who has not held preferment in any diocese, the diocese in which he was ordained.

31 Convictions for criminal offences and matrimonial orders, etc.: bishops and archbishops

- (1) If a person who is a bishop or archbishop –
 - (a) is convicted (whether in England or elsewhere) of an offence mentioned in section 30(1)(a)(i) or (ii) above,¹⁰ or
 - (b) has a decree of divorce or an order of *judicial* separation made against him following a finding of adultery, behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent or desertion and, in the case of divorce, the decree has been made absolute, *or*
 - (c) *is included in a barred list,*¹¹

he shall be liable without further proceedings to a penalty of removal from office or prohibition (whether for life or limited) or both.

- (2) Where a person is liable to a penalty of removal from office or prohibition or both by virtue of subsection (1) above and the archbishop concerned proposes to impose such a penalty, he shall, after consultation with the president of tribunals, inform that person in writing of that proposal, together with an invitation to send representations in writing to the archbishop within the period of twenty-eight days. On the expiry of that period the archbishop shall decide whether or not to impose the penalty and shall inform that person in writing of the decision. If the decision is to impose a penalty, that person may –
 - (a) if he is a bishop, request the other archbishop, or
 - (b) if he is an archbishop, request the president of tribunals,

to review the decision and upon such a review the archbishop or the president of tribunals, as the case may be, may uphold or reverse the decision after consideration of all the circumstances, including any representations made under this subsection.

- (3) *Subject to subsection (3A) below, a penalty shall not be imposed under this section after the expiry of the period of two years beginning with the date on which the conviction becomes conclusive or, as the case may be, the decree absolute or order is made.*

¹⁰ Section 31(1)(a) does not have effect in relation to any offence mentioned in section 30(1)(a)(ii) if the conviction occurred before 1st February 2014.

¹¹ Section 31(1)(c) was inserted with effect from 1st February 2014.

- (3A) *The president of tribunals may, on application by the archbishop, if the person liable to a penalty under this section is a bishop, or the other archbishop, if the person liable is an archbishop, extend the period of two years referred to in subsection (3) above if, after consultation with the bishop or archbishop concerned, he is satisfied that the archbishop or the other archbishop, as the case may be, did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.*¹²
- (4) Where a penalty is to be imposed under this section it shall be imposed –
- (a) in the case of a person who is a bishop, by the archbishop of the relevant province after consultation with the two senior diocesan bishops of the province, and
 - (b) in the case of a person who is an archbishop, by the other archbishop after consultation as aforesaid.
- (5) When imposing a penalty under this section the archbishop shall be attended by the registrar of his province. The penalty shall be reduced to writing and a copy thereof shall be recorded in the registry of the province concerned and sent to the archbishop concerned.
- (6) The functions exercisable under this section by the archbishop of the relevant province shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercisable by the other archbishop.
- (7) In this section “bishop” means any diocesan bishop, any suffragan bishop and any other bishop.

32 Consequences of penalties imposed under section 30 or 31

Where a penalty of removal from office or prohibition is imposed on any person pursuant to the provisions of section 30 or 31 above the penalty shall have effect subject to the provisions of sections 24 to 29 above, and the like consequences shall ensue in all respects as if such person had been found to have committed misconduct under this Measure and such a penalty had been imposed on him.

33 Duty to disclose criminal convictions and arrests

- (1) A person in Holy Orders who (whether in England or elsewhere) is convicted of an offence or is arrested on suspicion of committing an offence shall be under a duty, within the period of twenty-eight days following the conviction or arrest, –
- (a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,
 - (b) in the case of a bishop, to inform the archbishop concerned, and
 - (c) in the case of an archbishop, to inform the other archbishop,

of the conviction or arrest.

¹² Section 31(3A) was inserted with effect from 1st February 2014.

- (2) Failure to comply with the requirements of subsection (1) above shall be regarded as a failure to do an act required by the laws ecclesiastical for the purposes of section 8(1) above.

34 Duty to disclose *details of divorce and separation orders*¹³

- (1) *A person in Holy Orders in respect of whose marriage a decree nisi of divorce has been made absolute or an order of judicial separation has been made shall be under a duty, within the period of twenty-eight days following the decree or order, –*
- (a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,*
 - (b) in the case of a bishop, to inform the archbishop concerned, and*
 - (c) in the case of an archbishop, to inform the other archbishop,*
- (i) of the decree or order,*
 - (ii) as to whether he was the respondent in the proceedings, and*
 - (iii) if he was the respondent, of any finding of adultery, unreasonable behaviour or desertion against him and of the details or particulars of the conduct which led to any such finding.*
- (2) *Failure to comply with the requirements of subsection (1) above shall be regarded as a failure to do an act required by the laws ecclesiastical for the purposes of section 8(1) above.*

34A Duty to disclose inclusion in a barred list¹⁴

- (1) *A person in Holy Orders who is included in a barred list shall be under a duty, within the period of twenty-eight days following his inclusion –*
- (a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,*
 - (b) in the case of a bishop, to inform the archbishop concerned, and*
 - (c) in the case of an archbishop, to inform the other archbishop,*
- (i) of his inclusion in the barred list, and*
 - (ii) of the reasons for his inclusion.*
- (2) *Failure to comply with the requirements of subsection (1) above shall be regarded as a failure to do an act required by the laws ecclesiastical for the purposes of section 8(1) above.*

Miscellaneous

35 Application of 1963 Measure's provisions

- (1) The following provisions of the 1963 Measure shall apply for the purpose of this Measure as they apply for the purposes of that Measure, with the adaptations specified in subsection (2) below –

¹³ As amended with effect from 1st February 2014.

¹⁴ Section 34A was inserted with effect from 1st February 2014.

Section 58 (payment of costs)
Section 60 (powers re-costs)
Section 61 (recovery of costs)
Section 62 (payment of expenses)
Section 63 (fees payable)
Section 71 (performance of duties during suspension etc)
Section 72 (occupation of parsonage house)
Section 73 (suspension of penalty during appeal)
Section 74 (restrictions during suspension etc.)
Section 75 (provisions as to lapse on avoidance of preferment)
Section 76 (rights of patronage during suspension etc.)
Section 78 (recording of declarations etc.)
Section 80 (place of sitting)
Section 81 (evidence etc.)
Section 83(2) and (3) (savings).

- (2) In the application of those provisions for the purposes of this Measure they shall be read with the following adaptations –
- (a) subject to the following provisions of this subsection, for any reference to the 1963 Measure there shall be substituted a reference to this Measure;
 - (b) for any reference to an offence cognisable under section 14 of the 1963 Measure there shall be substituted a reference to misconduct;
 - (c) any reference to a court shall be construed as including a reference to a disciplinary tribunal;
 - (d) for any reference to a declaration made or to be made in accordance with the provisions of the 1963 Measure there shall be substituted a reference to a penalty imposed under section 30 or 31 above;
 - (e) any reference to a person nominated to promote proceedings shall be construed as a reference to a person who may, by virtue of section 10 above or section 42 below, institute disciplinary proceedings under this Measure;
 - (f) for any reference to suspension or inhibition there shall be substituted a reference to prohibition;
 - (g) for any reference to a censure there shall be substituted a reference to a penalty.

36 Suspension of priest or deacon

- (1) Where –
- (a) a complaint in writing is made under section 10(1) above against a priest or deacon holding any preferment in a diocese, or
 - (b) a priest or deacon holding any preferment in a diocese is arrested (*whether in England or elsewhere*) on suspicion of committing a criminal offence, or
 - (c) *a priest or deacon holding any preferment in a diocese is convicted of any offence mentioned in section 30(1)(a) above,¹⁵ or*

¹⁵ Section 36(1)(c) was inserted with effect from 1st February 2014.

(d) a priest or deacon holding any preferment in a diocese is included in a barred list,¹⁶

the bishop of the diocese may, by notice in writing served on him, suspend him from exercising or performing without the leave of the bishop any right or duty of or incidental to his office:

Provided that, in the case of a complaint made as aforesaid, the priest or deacon shall not be suspended under this subsection unless and until the complaint falls to be considered under section 12(1) above.

- (2) The bishop may at any time, by notice in writing served on the priest or deacon concerned, revoke a notice of suspension served under subsection (1) above.
- (3) Where a notice of suspension is served under subsection (1)(a) or (b) above and it has not been revoked under subsection (2) the suspension shall continue until the expiry of the period of three months following service of the notice or until the proceedings under this Measure or for the criminal offence are concluded, whichever occurs earlier, but if the proceedings are not concluded before the expiry of that period a further notice of suspension under subsection (1)(a) or (b) above may be served, and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions.
- (3A) *Where a notice of suspension is served under subsection (1)(c) or (d) above and it has not been revoked under subsection (2), the suspension shall continue until the expiry of the period of three months following service of the notice or until a penalty is imposed on the priest or deacon under section 30(1) above, whichever occurs earlier, save that a further notice of suspension under subsection 1(c) or (d) may be served pending conclusion of any step taken under section 30(2) or (4), and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions.¹⁷*
- (4) Where a notice of suspension is served under subsection (1) above the bishop may, after consultation with the churchwardens and with the incumbent or priest in charge concerned, make such arrangements as he thinks fit for the ministrations of the church or churches concerned while the suspension remains in force.
- (5) While a notice of suspension under subsection (1) above remains in force in relation to a priest or deacon he shall not interfere with any person performing the services of a church in pursuance of arrangements made under subsection (4) above, and any such interference shall be regarded as an act in contravention of the laws ecclesiastical for the purposes of section 8(1) above.

¹⁶ Section 36(1)(d) was inserted with effect from 1st February 2014.

¹⁷ Section 36(3A) was inserted with effect from 1st February 2014.

- (6) A priest or deacon on whom a notice of suspension is served under subsection (1) above may appeal against the suspension to the president of tribunals and on any such appeal the president of tribunals may, within twenty-eight days following the lodging of the appeal, either confirm or revoke the suspension.

37 Suspension of bishop or archbishop

- (1) Where –
- (a) a complaint in writing is made under section 10(1) above against a bishop or archbishop, or
 - (b) a bishop or archbishop is arrested (*whether in England or elsewhere*) on suspicion of committing a criminal offence, or
 - (c) a bishop or archbishop is convicted of any offence mentioned in section 30(1)(a) above,¹⁸ or
 - (d) a bishop or archbishop is included in a barred list,¹⁹

the archbishop of the province in which the bishop holds office or, in the case of an archbishop, the other archbishop, may with the consent of the two most senior diocesan bishops in that province or the province of the other archbishop, as the case may be, by notice in writing suspend him from exercising any right or duty of or incidental to his office:

Provided that, in the case of a complaint made as aforesaid, the bishop or archbishop shall not be suspended under this subsection unless and until the complaint falls to be considered under section 12(1) above.

- (2) The archbishop may at any time, by notice in writing served on the bishop or archbishop concerned, revoke a notice of suspension served under subsection (1) above.
- (3) Where a notice of suspension is served under subsection (1) above the archbishop may, after consultation with the two most senior diocesan bishops of his province, make such arrangements as he thinks fit for the ministrations of the diocese or province concerned while the suspension remains in force.
- (4) While a notice of suspension under subsection (1) above remains in force in relation to a bishop or archbishop he shall not interfere with any person performing functions in pursuance of arrangements made under subsection (3) above.
- (5) In this section “bishop” means any diocesan bishop, any suffragan bishop or any other bishop.
- (6) Subsections (3), (3A) and (6) of section 36 above shall apply for the purposes of this section as they apply for the purposes of that section, *but as if for any*

¹⁸ Section 37(1)(c) was inserted with effect from 1st February 2014.

¹⁹ Section 37(1)(d) was inserted with effect from 1st February 2014.

reference to a priest or deacon there were substituted a reference to the bishop or, as the case may be, the archbishop and as if, in subsection (3A), the references to sections 30(1) and 30(2) were references, respectively, to sections 31(1) and 31(2).

38 Archbishops' list

- (1) Subject to the following provisions of this section, it shall be the duty of the archbishops acting jointly to compile and maintain a list of all clerks in Holy Orders –
 - (a) on whom a penalty or censure (by consent or otherwise) has been imposed under this Measure or the 1963 Measure; or
 - (b) who have been deposed from Holy Orders under the 1963 Measure; or
 - (c) who have executed a deed of relinquishment under the Clerical Disabilities Act 1870 (c. 31); or
 - (d) who have resigned preferment following the making of a complaint in writing against them under section 10(1) above or under the 1963 Measure; or
 - (dd) *whose name is included in a barred list;*²⁰ or
 - (e) who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment.
- (2) Where the archbishops *have* included a person falling within paragraphs (a) to (dd) of subsection (1) above in the list *the archbishop of the relevant province* shall take all reasonable steps to inform that person in writing that *they have* done so and of the particulars recorded in respect of that person. That person may request the president of tribunals to review the matter and upon such a review the president of tribunals shall direct that that person should continue to be included in the list or should be excluded therefrom and, in the former case, may also direct that the particulars relating to that person should be altered in such manner as may be specified.
- (3) Where the archbishops propose to include a person falling within paragraph (e) of subsection (1) above in the list *the archbishop of the relevant province* shall take all reasonable steps to inform that person in writing of the proposal and the particulars to be recorded, together with an invitation to send comments or representations in writing to the archbishop within the period of twenty-one days. On the expiry of that period the archbishops shall decide whether or not to include that person in the list and *the archbishop of the relevant province* shall inform that person in writing of *their* decision. If the decision is to include that person in the list that person may request the president of tribunals to review the decision and upon such a review the president of tribunals shall uphold or reverse the decision.
- (4) It shall be the duty of the archbishops to review the inclusion of a person in the list, in such manner as may be prescribed, on the expiry of the period of

²⁰ Section 38(1)(dd) was inserted with effect from 1st February 2014.

five years following the inclusion and also if requested to do so by that person or by the bishop of a diocese.

Provided that that person shall not be entitled to make a request under this subsection within the said period of five years nor within the period of five years following any previous review.

39 Code of Practice

- (1) It shall be the duty of the Clergy Discipline Commission to formulate guidance for the purposes of the Measure generally and, with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice.
- (2) The Clergy Discipline Commission may at any time amend or replace a Code of Practice issued under subsection (1) above by a further Code of Practice issued in accordance with the provisions of this section.
- (3) A Code of Practice shall be laid *in draft* before the General Synod and, *if it is approved by the General Synod without amendment, the Code shall be issued by the Clergy Discipline Commission.*
- (3A) *If the Code has been approved by the General Synod with amendment, it shall be referred to the Clergy Discipline Commission.*²¹
- (3B) *Where a draft Code of Practice is referred to the Clergy Discipline Commission under subsection (3A) above, then the Commission may either—*
 - (a) *issue the Code as so amended, or*
 - (b) *withdraw the Code for further consideration in view of any amendment by the General Synod,*

*and the Code shall not come into force until it has been approved by the General Synod and issued by the Commission.*²²
- (4) Where the Business Committee of the General Synod determines that a Code of Practice does not need to be debated by the General Synod then, unless –
 - (a) notice is given by a member of the General Synod in accordance with its Standing Orders that he wishes the Code to be debated, or
 - (b) notice is so given by any such member that he wishes to move an amendment to the Code,

the Code shall, for the purposes of subsection (3) above, be deemed to have been approved by the General Synod without amendment.

²¹ Section 39(3A) inserted with effect from 1st July 2013.

²² Section 39(3B) inserted with effect from 1st July 2013.

40 When convictions etc. are to be deemed conclusive

- (1) Proceedings under this Measure and a conviction by a secular court shall become conclusive for the purposes of this Measure –
 - (a) where there has been an appeal, upon the date on which the appeal is dismissed or abandoned or the proceedings on appeal are finally concluded, but, if varied on appeal, shall be conclusive only as so varied, and so far as it is reversed on appeal shall cease to have effect;
 - (b) if there is no such appeal, upon the expiration of the time limited for such appeal, or in the case of a conviction where no time is so limited, of two months from the date of the conviction; and
 - (c) in the case of a conviction against which there is no right of appeal from the date of the conviction.
- (2) After the conviction of a clerk in Holy Orders by a secular court becomes conclusive a certificate of such conviction shall, for the purposes of this Measure be conclusive proof that he has committed the act therein specified.
- (3) In the event of any such conviction by a secular court as makes a clerk in Holy Orders subject to removal from any preferment, or renders him liable to proceedings under this Measure the court shall cause the prescribed certificate of the conviction to be sent to the bishop of the diocese in which the court sits, and such certificate shall be preserved in the registry of the diocese, or of any other diocese to which it may be sent by the direction of the bishop.

41 Compensation

Any person in respect of whom a penalty of removal from office or revocation of a licence to serve in a diocese is imposed under this Measure and subsequently revoked on appeal shall be entitled to compensation, and the provisions of Schedule 4 to the Pastoral Measure 1983 (1983 No. 1) shall apply in relation to such a person as they apply to an incumbent of a benefice deemed to be vacated by virtue of section 25 of that Measure.

42 Application of Measure in special cases

- (1) In the application of this Measure to the following –
 - Cathedral clergy
 - Chaplains of prisons, hospitals, universities, schools and institutions in an extra-parochial place
 - Chaplains of the armed forces of the Crown
 - Ministers who have a licence from the archbishop of a province to preach throughout the province
 - Ministers who have a licence from the University of Oxford or Cambridge to preach throughout England

it shall be read with the following adaptations.

- (2) In the case of a clerk in Holy Orders serving in a cathedral church, disciplinary proceedings may be instituted only by –
 - (a) a person nominated by the council of the cathedral church; or
 - (b) any other person, if the diocesan bishop concerned determines that that person has a proper interest in making the complaint.
- (3) In the case of a chaplain of a prison, hospital, university, school or other institution, disciplinary proceedings may be instituted only by a person duly authorised by the diocesan bishop concerned to institute such proceedings.
- (4) In the case of a chaplain of one of the armed forces of the Crown –
 - (a) disciplinary proceedings may be instituted only if the archbishop of Canterbury determines that the person concerned has a proper interest in making the complaint;
 - (b) the complaint shall be laid before the archbishop of Canterbury and references to the diocesan bishop concerned shall be construed as references to that archbishop.
- (5) In the case of a minister who has a licence from the archbishop of a province–
 - (a) disciplinary proceedings may be instituted only by a person duly authorised by the archbishop to institute such proceedings;
 - (b) the complaint shall be laid before that archbishop and references to the diocesan bishop concerned shall be construed accordingly.
- (6) In the case of a minister who has a licence from the University of Oxford or Cambridge –
 - (a) disciplinary proceedings may be instituted only by a person duly authorised by the archbishop of Canterbury to institute such proceedings;
 - (b) the complaint shall be laid before that archbishop and references to the diocesan bishop concerned shall be construed accordingly.

43 Interpretation

- (1) In this Measure, unless the context otherwise requires –

“the 1963 Measure” means the Ecclesiastical Jurisdiction Measure 1963 (1963 No. 1);

“*barred list*” has the meaning assigned to it by section 30(1A) above;

“the Commission” means the Clergy Discipline Commission;

“designated officer” means an officer of the legal office of the National Institutions of the Church of England designated by the Archbishops’ Council for the purposes of this Measure;

“diocese” means a diocese in the province of Canterbury or a diocese in the province of York and “diocesan” shall be construed accordingly;

“disciplinary tribunal” means a bishop’s disciplinary tribunal constituted in accordance with section 22 above;

“high judicial office” has the meaning assigned to it by section 25 of the Appellate Jurisdiction Act 1876 (c. 59);

“limited prohibition” has the meaning assigned to it by section 24(1)(b) above;

“misconduct” means any act or omission referred to in section 8(1) above;

“preferment” includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty;

“prescribed” means prescribed by rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1);

“prohibition for life” has the meaning assigned to it by section 24(1)(a) above and “prohibited for life” shall be construed accordingly;

“relevant province” means, according to the context, the province of Canterbury or the Province of York;

“resident” means ordinarily resident;

“Vicar-General’s court” means the Vicar-General’s court constituted in accordance with section 23 above.

- (2) For the purposes of this Measure an extra-diocesan place (including any place exempt or peculiar other than a Royal Peculiar) which is surrounded by one diocese shall be deemed to be situate within that diocese, and an extra-diocesan place which is surrounded by two or more dioceses shall be deemed to be situate within such one of them as the archbishop of the relevant province may direct.
- (3) For the purposes of this Measure the seniority of diocesan bishops (other than archbishops) shall be determined by reference to the length of time that each of them has held office as diocesan in either province without interruption from any cause.

44 Amendment of Measures

- (1) *(Repealed)*
- (2) The 1963 Measure shall have effect subject to the amendments specified in Schedule 1 to this Measure.
- (3) In section 5(5) of the Ecclesiastical Judges and Legal Officers Measure 1976 (1976 No. 2) for the words “date of service of the instrument” there shall be substituted the words “service of the instrument or such earlier date as the archbishop or bishop, as the case may be, may allow”.
- (4) In section 10 of the Ecclesiastical Fees Measure 1986 (1986 No. 2) –
 - (a) in the definition of “ecclesiastical judges” after the words “Commissary General” there shall be inserted the words “, the president and deputy president of tribunals for the purposes of the Clergy Discipline Measure 2003”;
 - (b) in the definition of “legal officers” after the words “provincial registrars,” there shall be inserted the words “the registrar of tribunals for the purposes of the Clergy Discipline Measure 2003,”.

- (5) In the first column of the table in Schedule 1 to the Church of England (Legal Aid) Measure 1994 (1994 No. 3) –
- (a) in item 1 after the words “before any” there shall be inserted the words “disciplinary tribunal”, and at the end there shall be inserted the words “or of misconduct under the Clergy Discipline Measure 2003”;
 - (b) in item 3 after the word “committee” there shall be inserted the words “and including also that Schedule as applied by section 41 of the Clergy Discipline Measure 2003”.

45 Rules

- (1) Rules made under section 26(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1) may make provision for carrying into effect the provisions of this Measure and, accordingly, in that subsection after paragraph (e) there shall be inserted the words –
- “(f) the Clergy Discipline Measure 2003;”.
- (2) In section 26(2) of that Measure –
- (a) in paragraph (a) for the words from “commissions” to “Measures 1990 and 1994”, there shall be substituted the words “disciplinary tribunals, commissions, committees and examiners provided for in the 1963 Measure, the Care of Cathedrals Measures 1990 and 1994 or the Clergy Discipline Measure 2003”;
 - (b) in paragraph (c) after the word “courts” there shall be inserted the words “disciplinary tribunals;”;
 - (c) after paragraph (c) there shall be inserted the words “(cc) the procedure and practice where complaints are referred to registrars under section 11 of the Clergy Discipline Measure 2003”.
- (3) In section 25(2)(c) of that Measure after the words “1963 Measure” there shall be inserted the words “or disciplinary proceedings under the Clergy Discipline Measure 2003;”.

46 Repeals

The enactments specified in Schedule 2 to this Measure are hereby repealed to the extent specified in the second column of the Schedule.

47 Transitional provisions

- (1) Nothing in this Measure shall affect any proceedings instituted under Part III of the 1963 Measure or declaration made under Part IX thereof before the date on which section 8 above comes into operation, and the provisions of that Measure shall continue to apply in relation to any such proceedings or declaration as if this Measure had not been passed.
- (2) Proceedings under this Measure may be instituted in relation to misconduct committed before the date on which section 8 above comes into operation:

Provided that the provisions of the 1963 Measure shall continue to apply in relation to any offence under that Measure committed before that date which does not constitute misconduct under this Measure as if this Measure had not been passed.

- (3) This Measure shall not affect any censure, deposition, declaration of deprivation and disqualification or notice of inhibition imposed under the 1963 Measure, but any such censure, or declaration shall be deemed for the purposes of this Measure to be a penalty imposed under this Measure of the kind corresponding to the censure or declaration, and sections 26 to 29 above shall have effect in relation thereto accordingly.
- (4) Section 30 and 31 above shall apply in relation to sentences of imprisonment passed before, as well as after, the date on which those sections come into operation.

48 Citation, commencement and extent

- (1) This Measure may be cited as the Clergy Discipline Measure 2003.
- (2) This Measure shall come into operation on such date as the archbishops of Canterbury and York may jointly appoint, and different dates may be appointed for different provisions.
- (3) This Measure shall extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man, but the provisions thereof may be applied to the Channel Islands as defined in the Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and if an Act of Tynwald or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.

SCHEDULES

SCHEDULE 1

Section 44(2).

AMENDMENT OF ECCLESIASTICAL JURISDICTION MEASURE 1963

- 1 The Ecclesiastical Jurisdiction Measure 1963 (1963 No. 1) shall be amended as follows.
- 2 In section 1(1) after the words “original jurisdiction” there shall be inserted the words “in non-disciplinary matters”.
- 3 In section 3 –
 - (a) in subsection (2)(b) for the words “prolocutor of the Lower House of the Convocation” there shall be substituted the words “president of tribunals from among the persons serving on the provincial panel”;
 - (b) in subsection (2)(c) for the words from “Chairman” to “appropriate” there shall be substituted the words “president of tribunals from among the persons serving on the provincial panel of the relevant province”;
 - (c) in subsection (4) for the words from “Chairman” to “Courts” there shall be substituted the words “president of tribunals appoints a person to be a judge of either of the said Courts under paragraph (c) of subsection (2) of this section”;
 - (d) in subsection (5)(b)(ii) for the words from “Upper” to “resolves” there shall be substituted the words “president of tribunals determines”.
- 4 In section 7 –
 - (a) in subsection (1A) after the word “York” there shall be inserted the words “(including that Court as constituted in accordance with the Clergy Discipline Measure 2003)”;
 - (b) after subsection (1A) there shall be inserted the following subsection-

“(1B) Each of the said Courts shall also have jurisdiction to hear and determine appeals from judgments, orders or decrees of disciplinary tribunals within the provinces for which they are constituted respectively.”.
 - (c) in subsection (2) for the words from “(a) in a civil suit” to the end there shall be substituted the words –
 - “(a) in a disciplinary case, at the instance of any party to the proceedings on a question of law and the defendant on a question of fact;
 - (b) in any other case, at the instance of any party to the proceedings but only with the leave of the consistory court or the Vicar-General’s Court as the case may be or, if leave is refused by that court, of the Dean of the Arches and Auditor”.
- 5 In section 12 –

- (a) after the words “consistory court” there shall be inserted the words “, Vicar-General’s court or disciplinary tribunal”;
 - (b) for the words “or officers of any such court” there shall be substituted the words “, members or officers of any such court or tribunal”.
- 6 In section 47 –
- (a) in subsection (1) for the words from “shall” to “in any other case,” there shall be substituted the words “under this Measure shall be heard and disposed of”;
 - (b) in subsection (2) for the words from the beginning to “proceedings” there shall be substituted the words “Proceedings under this Measure”.
- 7 In section 49(3) for the words from the beginning to “ceremonial” there shall be substituted the words “In proceedings under this Measure”.
- 8 In section 50 after the word “pronounced” there shall be inserted the words “in pursuance of proceedings under this Measure”.
- 9 In section 52 after the word “deposed” there shall be inserted the words “under this Measure”.
- 10 In section 66(1) at the end there shall be inserted the words –
“disciplinary tribunal”, president of tribunals” and “provincial panel” have the same meanings as in the Clergy Discipline Measure 2003”.
- 11 In section 67 the words from “shall be determined in accordance” to “between each other” shall be omitted.
- 12 In section 69 for the words “Parts IV, V and VI” there shall be substituted the words “Part VI”.
- 13 In section 74(1) after the words “this Measure” there shall be inserted the words “for a specified time”.
- 14 In section 76(1) after the words “this Measure” there shall be inserted the words “for a specified time”.

REPEALS

<i>Measure</i>	<i>Extent of repeal</i>
<p>1963 No. 1, Ecclesiastical Jurisdiction Measure 1963</p>	<p>In section 1, in subsection (2) paragraph (b), and in subsection (3), paragraph (a) and in paragraph (c) the words from “of any commission” to “also”.</p> <p>In section 6, in subsection (1) paragraph (a).</p> <p>In section 7, in subsection (1)(a) the letter “(a),”.</p> <p>Section 9.</p> <p>In section 11, subsection (1).</p> <p>In section 14, in subsection (1) the words from “(b) any other offence” to the end of the subsection.</p> <p>In section 15, the words from “but this limitation” to the end.</p> <p>In section 16, the words from “Provided that” to the end.</p> <p>Part IV.</p> <p>Part V.</p> <p>In section 46, in subsection (1) the words from “other than” to “this Measure” and in subsection (2) the words from the beginning to “section sixty-nine of this Measure”.</p> <p>Section 54.</p> <p>Part IX.</p> <p>Section 68.</p> <p>In section 69 the words from “Provided that” to the end.</p>

	<p>In section 70 the words “IV, V or”.</p> <p>Section 77.</p> <p>Section 79.</p> <p>Schedule 2.</p>
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