

Safeguarding and Clergy Discipline Legislation - Summary

Currently passing through the synodical legislative process are a number of provisions which relate to safeguarding and clergy discipline in the form of the Safeguarding and Clergy Discipline Measure and various canonical amendments. These legislative proposals will be considered for the final time at the July Synod. Once approved by Synod, the draft Measure will need to be approved by Parliament. This is expected to take some time and therefore Royal Assent is unlikely to occur before the end of the year. In fact, the draft legislation won't be brought into force until 2016. Indeed, various consequential amendments will have to be made to the Clergy Discipline Rules and Code of Practice, which will need to be considered at the February Synod; as well as regulations made under the draft legislation. All this must be done prior to bringing the relevant legislation into force. Once the relevant provisions are in force you will of course be notified. I summarise briefly here the principal amendments that appear in the draft legislation:-

Draft Safeguarding and Clergy Discipline Measure

- The clergy suspension regime will be strengthened. A Bishop will be able to suspend a member of the clergy, where the police or local authority notify the bishop that a member of the clergy presents a significant risk of harm, (this is prior to Clergy Discipline Measure 2003 ("CDM") procedures being commenced), (Clause 1). In addition, the bishop will now also be able to suspend clergy prior to the determination of an application to bring proceedings out of time under the CDM. (Clause 8)
- A person who is on the barred list under the Safeguarding Vulnerable Groups Act 2006 will be disqualified from serving as a churchwarden or as a member of a PCC, district council or synod or as secretary or treasurer of the PCC. In addition, PCC, district council or synod members (and treasurers and secretaries of PCCs) will also now be disqualified if they have committed an offence under Schedule 1 to the Children and Young Persons Act 1933, (this already applies to churchwardens, in all cases the bishop will have a power to waive this disqualification). Also, proposed is a power to suspend a churchwarden and a member of the PCC etc. who is arrested on suspicion of committing a Schedule 1 offence or where the police or local authority notify the bishop that a churchwarden, PCC member etc. presents a significant risk of harm. There will be rights of appeal. (Clauses 2, 3 and 4)

(Similar provisions in relation to disqualification and suspension can be found in the draft amending canon in relation to readers and lay workers – Canon E6 (Of the licensing of readers) and Canon E8 (Of the admission and licensing of lay workers) shall be amended accordingly).

- Clergy (and relevant others, which includes churchwardens) will be required to have “due regard” to guidance issued by the House of Bishops on matters relating to safeguarding. Failing to comply with this duty to have “due regard” will be a disciplinary offence for clergy under the CDM. A duty to have “due regard” to guidance means that the person under the duty is not free to disregard it but is required to follow the guidance unless there are cogent reasons for not doing so. It means that a person can only depart from the guidance if the reasons for doing so are clear, logical and convincing, (e.g. the guidance is out of date and has been superseded by legislation or other relevant guidance). (Clause 5)
- In broad terms, the limitation period will be removed for sexual misconduct cases, where the conduct in question is conduct of a “sexual nature” towards a child or to a vulnerable adult, where the President of Tribunals considers that an adult is a vulnerable adult at the time of the misconduct, within the meaning of the draft Measure. The parties can make representations as regards the vulnerability of the relevant adult. (Clause 7)
- Under the draft Measure a child is defined as meaning a “*person aged under 18*” and a vulnerable adult is defined as “*a person aged 18 or over whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or distress, or otherwise; and for that purpose, the reference to being impaired is to being temporarily or indefinitely impaired...*” (Clause 6)

Draft Amending Canon No.34

Canon B 43.1: relations with other churches

- Canon B 43.1 enables ministers and laity from other churches to be invited by an incumbent to perform certain duties if they are “in good standing” of a church to which the Canon applies. Amendments to this will ensure that the incumbent will be required to make such enquiries as are appropriate in all the circumstances.

Canon C8 of ministers exercising their ministry

- Amendments will provide that only a minister who already has authority under this Canon to officiate (in a diocese) can be allowed by the minister with the cure of souls to officiate in his/her church or chapel.
- In addition, amendments will prevent a cleric from robing when prohibited or suspended under the CDM. It will also make it a disciplinary matter for a minister with the cure of souls to allow another minister to robe or officiate if he/she knows the other minister has been prohibited or suspended, or does not have a bishop’s authority to officiate.
- Further, a new paragraph will be added to Canon C8 so that all clergy with a diocesan bishop’s authority to officiate will have to participate in arrangements approved by the bishop for training in matters relating to safeguarding.

Canon C30 of Safeguarding

- New Canon C30 will require a bishop to appoint a safeguarding advisor to advise the bishop. It will also enable the House of Bishops to make regulations as to who can be appointed as a safeguarding advisor.
- The new Canon will also enable the bishop to compel a member of the clergy to undergo a risk assessment when the bishop becomes concerned about him/her from a safeguarding perspective. Bishops and Archbishops will also be included. It will be a disciplinary matter if clergy fail to comply.

The House of Bishops will be able to regulate how and by whom risk assessments are carried out.