



Clergy Discipline Measure 2003

2003 No. 3

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—
- 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;

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- (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 during proceedings

- (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 on suspicion of committing a criminal offence,

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) 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) above may be served, and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions.
- (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.
- (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 during proceedings

(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 on suspicion of committing a criminal offence,

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) and (6) of section 36 above shall apply for the purposes of this section as they apply for the purposes of that section.

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
 - (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 archbishop has included a person falling within paragraphs (a) to (d) of subsection (1) above in the list he shall take all reasonable steps to inform that person in writing that he has 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

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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 archbishop proposes to include a person falling within paragraph (e) of subsection (1) above in the list he 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 archbishop shall decide whether or not to include that person in the list and shall inform that person in writing of his 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 archbishop to review the inclusion of a person in the list, in such manner as may be prescribed, on the expiry of the period of 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 before the General Synod and shall not come into force until approved by the General Synod, whether with or without amendment.
- (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.

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—

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- (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 \(1963 No. 1\)](#);
 - “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) In section 95 of the [Pluralities Act 1838 \(c. 106\)](#) at the end there shall be inserted the words “And provided further that the power conferred by this section shall not be exercised by reason of any act or omission referred to in section 8(1) of the Clergy Discipline Measure 2003.”
- (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—

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- (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) Sections 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.