



# Safeguarding and Clergy Discipline Measure 2016

2016 No. 1

## *Clergy discipline proceedings*

### **7 Removal of limitation period in sexual misconduct cases**

(1) In section 9 of the Clergy Discipline Measure 2003 (limitation period for disciplinary proceedings for misconduct), the text of which becomes subsection (1) of that section, at the end insert—

“(2) Subsection (1) does not apply where the misconduct in question is conduct of a sexual nature towards a child.

(3) Subsection (1) does not apply where the misconduct in question is conduct of a sexual nature towards an adult if the president of tribunals considers that the adult was a vulnerable adult at the time of the conduct, having taken into account such representations as the complainant and respondent each make on the issue of vulnerability.

(4) Where, in a case within subsection (3), the president of tribunals does not consider that the adult was a vulnerable adult at the time of the conduct in question, the president may at the same time decide whether nonetheless to give permission under subsection (1) for the proceedings to continue; and for that purpose, the second proviso to subsection (1) has effect as if for “to be instituted” there were substituted “to continue despite having been instituted”.

(2) This section applies to conduct occurring before the commencement of this section (as well as to conduct occurring afterwards).

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#### **Commencement Information**

**II** [S. 7](#) in force at 1.1.2017 by [S.I. 2016/1213](#), [art. 2](#)

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*Changes to legislation: There are currently no known outstanding effects for the Safeguarding and Clergy Discipline Measure 2016, Cross Heading: Clergy discipline proceedings. (See end of Document for details)*

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## 8 Application to make complaint out of time: power to suspend

(1) After section 36 of the Clergy Discipline Measure 2003 insert—

### **“36A Suspension of priest or deacon pending determination of application to bring proceedings out of time**

- (1) This section applies where a complainant applies to the president of tribunals for permission under section 9 for disciplinary proceedings against a priest or deacon holding any preferment in a diocese to be instituted after the expiry of the period provided for by that section.
- (2) The bishop of the diocese may, by notice in writing served on the priest or deacon, suspend the priest or deacon from exercising or performing without the leave of the bishop any right or duty of or incidental to the priest's or deacon's office.
- (3) The bishop may not exercise the power under subsection (2) unless the bishop is satisfied that the suspension is necessary in all the circumstances of the case.
- (4) Before exercising the power under subsection (2), the bishop must refer the matter to the registrar of the diocese for advice on—
  - (a) whether or not the complainant has a proper interest in instituting the proceedings,
  - (b) whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with this Measure, and
  - (c) whether or not the suspension is necessary in all the circumstances of the case.
- (5) Having considered a matter referred under subsection (4), the registrar must send a written report to the bishop setting out the registrar's advice; and the bishop must, in deciding whether to exercise the power, have regard to the registrar's report.
- (6) The bishop may at any time, by notice in writing served on the priest or deacon, revoke the notice of suspension under subsection (2).
- (7) Where a notice of suspension is served under subsection (2) and has not been revoked under subsection (6), the suspension continues until—
  - (a) the expiry of the period of three months following service of the notice, or
  - (b) if the application for permission is determined before the expiry of that period, the time determined in accordance with subsection (8) or (10) (as the case may be).
- (8) If the application for permission is granted—
  - (a) section 36(1), in its application to the complaint, has effect as if the words from “Provided that” to the end were omitted, and
  - (b) the suspension continues until whichever is the first of the events mentioned in subsection (9) to occur.
- (9) Those events are—
  - (a) the expiry of the period of 14 days beginning with the day on which the disciplinary proceedings are instituted;

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**Changes to legislation:** There are currently no known outstanding effects for the Safeguarding and Clergy Discipline Measure 2016, Cross Heading: Clergy discipline proceedings. (See end of Document for details)

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- (b) the expiry of the period within which permission was given for the proceedings to be instituted (without them having been instituted);
    - (c) the service of a notice of suspension under section 36(1) on the priest or deacon.
  - (10) If the application for permission is refused, the suspension ends with the refusal.
  - (11) If the application for permission is not determined before the end of the period mentioned in subsection (7)(a), a further notice of suspension under subsection (2) may be served; and—
    - (a) subsections (7) to (10) and this subsection apply in relation to the further suspension as they applied to the earlier suspension or suspensions, but
    - (b) subsection (4) does not apply in relation to the power to give the further notice.
  - (12) Subsections (4) to (6) of section 36 apply in relation to a notice of suspension under subsection (2) of this section as they apply in relation to a notice of suspension under subsection (1) of that section.”
- (2) After section 37 of the Clergy Discipline Measure 2003 insert—

**“37A Suspension of bishop or archbishop pending determination of application to bring proceedings out of time**

- (1) This section applies where a complainant applies to the president of tribunals for permission under section 9 for disciplinary proceedings against a bishop or archbishop to be instituted after the expiry of the period provided for by that section.
- (2) Where the application relates to a bishop, the archbishop of the province in which the bishop holds office may, with the consent of the two most senior diocesan bishops in that province, by notice in writing suspend the bishop from exercising any right or duty of or incidental to the bishop's office.
- (3) Where the application relates to an archbishop, the other archbishop may, with the consent of the two most senior diocesan bishops in the province of the other archbishop, by notice in writing suspend the archbishop from exercising any right or duty of or incidental to the archbishop's office.
- (4) The archbishop may not exercise the power under subsection (2) or (3) unless the archbishop is satisfied that the suspension is necessary in all the circumstances of the case.
- (5) Before exercising the power under subsection (2) or (3), the archbishop must refer the matter to the registrar of the province for advice on—
  - (a) whether or not the complainant has a proper interest in instituting the proceedings,
  - (b) whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with this Measure, and
  - (c) whether or not the suspension is necessary in all the circumstances of the case.

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- (6) Having considered a matter referred under subsection (5), the registrar must send a written report to the archbishop setting out the registrar's advice; and the archbishop must—
  - (a) when seeking the consent of the two diocesan bishops under subsection (2) or (3) (as the case may be), provide each of them with a copy of the registrar's report, and
  - (b) in deciding whether to exercise the power to suspend, have regard to the registrar's report.
- (7) The archbishop may at any time, by notice in writing served on the bishop or other archbishop (as the case may be), revoke the notice of suspension under subsection (2) or (3).
- (8) Subsections (7) to (11) of section 36A apply in relation to a notice of suspension under subsection (2) or (3) of this section as they apply in relation to a notice of suspension under subsection (2) of that section, but as if—
  - (a) the reference in subsection (7) to subsection (6) of section 36A were a reference to subsection (7) of this section,
  - (b) the reference in subsection (8) to section 36(1) were a reference to section 37(1), and
  - (c) the reference in subsection (11)(b) to subsection (4) of section 36A were a reference to subsection (5) of this section.
- (9) Subsections (3) and (4) of section 37, and subsection (6) of that section so far as relating to section 36(6), apply in relation to a notice of suspension under subsection (2) or (3) of this section as they apply in relation to a notice of suspension under subsection (1) of section 37.
- (10) In this section, “bishop” has the same meaning as in section 37.”
- (3) This section applies to conduct occurring before the commencement of this section (as well as to conduct occurring afterwards).

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**Commencement Information**

**I2** [S. 8](#) in force at 1.1.2017 by [S.I. 2016/1213](#), [art. 2](#)

## 9 Registrar of tribunals: delegation of functions

- (1) In section 5 of the Clergy Discipline Measure 2003 (registrar of tribunals), in subsection (7), after “registrar of tribunals for the other province” insert “ or, where a person has been selected under subsection (8), that person ”.
- (2) After that subsection insert—
  - “(8) The registrar of tribunals for a province—
    - (a) may select a person to perform the duties of the registrar in the circumstances mentioned in subsection (7), but
    - (b) may not do so without having obtained the written approval of the president of tribunals.”

*Changes to legislation:* There are currently no known outstanding effects for the Safeguarding and Clergy Discipline Measure 2016, Cross Heading: Clergy discipline proceedings. (See end of Document for details)

**Commencement Information**

**I3** [S. 9](#) in force at 16.5.2016 by [S.I. 2016/552](#), [art. 2](#)

**10 President of tribunals: power to remit to bishop**

(1) In section 11 of the Clergy Discipline Measure 2003 (preliminary scrutiny of complaint), in subsection (4)—

(a) after “considers the dismissal to be plainly wrong,” insert “he may—  
(a)”,  
and

(b) at the end insert “, or

(b) remit the complaint to the bishop and direct the bishop to reconsider the dismissal”.

(2) After subsection (4) of that section insert—

“(4A) On a reconsideration following a direction under subsection (4)(b), the bishop may nonetheless exercise the power under subsection (3) and, if the bishop does so, must give notice in accordance with that subsection; and subsection (4) and this subsection apply accordingly.”

(3) In section 13 of that Measure (decision to take no further action), in subsection (3)—

(a) after “considers that the bishop's determination was plainly wrong, he may” insert “—

(a)”,  
and

(b) at the end insert “, or

(b) remit the complaint to the bishop and direct the bishop to reconsider the determination that there is to be no further action”.

(4) After subsection (3) of that section insert—

“(4) On a reconsideration following a direction under subsection (3)(b), the bishop may nonetheless decide under section 12(1)(a) to take no further action; and, if the bishop does so, this section applies accordingly.”

**Commencement Information**

**I4** [S. 10](#) in force at 1.1.2017 by [S.I. 2016/1213](#), [art. 2](#)

**11 Provincial panels: reappointment of legally qualified persons**

In section 21 of the Clergy Discipline Measure 2003 (provincial panels), in subsection (5)—

(a) after “on retiring from the panel” insert “, a person nominated under subsection (2)(a) or (b) or (3)”, and

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- (b) after “further period of six years” insert “, and a person nominated under subsection (2)(c) shall be eligible to be nominated to serve for one or more further periods of six years”.

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**Commencement Information**

**I5** [S. 11](#) in force at 16.5.2016 by [S.I. 2016/552](#), [art. 2](#)

**Changes to legislation:**

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