

GENERAL SYNOD
LEGISLATIVE COMMITTEE

SAFEGUARDING AND CLERGY DISCIPLINE MEASURE
COMMENTS AND EXPLANATIONS

The Safeguarding and Clergy Discipline Measure is intended to strengthen the Church of England's safeguarding framework, and enhance the Church's ability to deal effectively with allegations of misconduct by its ordained ministers.

The provisions of the Measure mainly fall into seven areas:-

First, on the basis of information supplied by the police or a local authority, a bishop will be able to suspend a priest or deacon who presents a significant risk of harm to children or vulnerable adults.

Second, the Measure extends disqualification provisions in respect of persons who hold office as churchwarden to include safeguarding grounds, and it introduces disqualification on safeguarding grounds for members, treasurers and secretaries of Parochial Church Councils.

Third, it will enable a bishop to suspend on certain safeguarding grounds churchwardens, and members, treasurers and secretaries of Parochial Church Councils.

Fourth, it introduces a duty on relevant persons and bodies within the Church of England to have due regard to the Church's safeguarding policies.

Fifth, it will remove the normal one year limitation period for disciplinary proceedings against clergy for alleged misconduct of a sexual nature towards a child or vulnerable adult, so that permission to make a complaint out of time will not be required in such cases.

Sixth, for complaints against clergy where permission to make a complaint out of time is required, the bishop will be able to suspend the cleric whilst the application for permission is being determined.

Seventh, the Measure makes a number of amendments to the Clergy Discipline Measure 2003 which are of a technical kind.

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Safeguarding and Clergy Discipline Measure ('the Measure') has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.
2. The Measure amends the Clergy Discipline Measure 2003 ('the 2003 Measure'), the Churchwardens Measure 2001, the Church Representation Rules, and the Church of England (Legal Aid) Measure 1994, and makes consequential amendments to the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Together with Amending Canon No.34, the Measure is intended to strengthen the Church of England's safeguarding framework and enhance the Church's ability to deal effectively with allegations of misconduct by its ordained ministers.
3. The provisions of the Measure mainly fall into seven areas:-
 - (i) On the basis of information supplied by the police or a local authority a bishop will be able to suspend a priest or deacon who presents a significant risk of harm to children or vulnerable adults.
 - (ii) The Measure extends on safeguarding grounds provisions that disqualify certain persons from holding office as churchwarden, and it introduces on safeguarding grounds disqualifications for members, treasurers and secretaries of Parochial Church Councils.
 - (iii) It will enable a bishop to suspend on certain safeguarding grounds churchwardens, and members, treasurers and secretaries of Parochial Church Councils.
 - (iv) There will be a duty on all relevant persons within the Church of England to have due regard to the Church's safeguarding policies.
 - (v) The normal one year limitation period will be removed for disciplinary proceedings against clergy for misconduct of a sexual nature towards a child or vulnerable adult; permission to make a complaint out of time in such cases will not therefore be required.
 - (vi) For complaints against clergy where permission to make a complaint out of time is required, the bishop will be able to suspend the cleric whilst the application for permission is being determined.
 - (vii) The Measure makes certain technical amendments to the 2003 Measure.
4. The Legislative Committee invites the Ecclesiastical Committee, having considered the material presented here, to issue a favourable report on the Measure. If the Ecclesiastical Committee requires any further explanation, the Legislative Committee stands ready to provide it.

BACKGROUND TO THE MEASURE

5. In December 2011 the then Archbishop of Canterbury, the Most Rev'd and Rt Hon Dr Rowan Williams, initiated a visitation of the Diocese of Chichester. This was the first time an archbishop had taken action of that kind in the Church of England since the late nineteenth century. It reflected concerns about shortcomings in the way safeguarding arrangements had operated in the diocese.
6. The Commissaries appointed by the Archbishop to conduct the visitation issued interim and final reports in August 2012 and April 2013, making recommendations to enable the Church of England to deal more effectively with safeguarding issues. In response to those reports in June 2013 the Archbishops' Council undertook a consultation on the issues raised by the Commissaries' recommendations.
7. Some of the Commissaries' recommendations required legislation to implement them. In July 2013 the General Synod passed a motion which included an invitation to the Business Committee of the Synod to schedule First Consideration of the necessary draft legislation as soon as the responses to the Archbishops' Council's consultation document had been assessed, with a view to securing Final Approval for the legislation in the lifetime of that Synod.
8. A package of proposals for legislative change was prepared and approved by both the Archbishops' Council and the House of Bishops. The proposals took into account not just the recommendations of the Commissaries but also other submissions made in the course of the Council's consultation. The legislative package was contained in two different instruments.
9. A Measure was required to amend the 2003 Measure, the Churchwardens Measure 2001 and the Church Representation Rules, together with consequential amendments to the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, and also to impose a new duty on certain persons to have due regard to guidance issued by the House of Bishops on safeguarding issues. An Amending Canon (which does not of course need Parliamentary approval) was required to amend existing canon law in respect of the exercise of ministry by ordained ministers, the admission and licensing of readers and lay workers, and the introduction of new canonical provisions for the appointment of bishops' diocesan safeguarding advisors and the regulation of risk assessments on clergy.
10. Given the importance and range of the proposals, the General Synod was given the opportunity to consider the package in February 2014, and following debate endorsed the proposals. Draft legislation, in the form of the Measure and Amending Canon No. 34 was introduced at the July 2014 group of sessions. A summary of the more significant provisions contained in Amending Canon No. 34 is set out in the Appendix to these Comments and Explanations.

11. Most of the proposals in the Measure (and in the Amending Canon) are preventative and protective. Their aim is to prevent circumstances arising where there might be a risk of abuse, whether committed by clergy or by lay officers of the church, and to enable the bishop to take prompt action when abusive behaviour is alleged to have occurred. No safeguards can ever be 100% failsafe but the Church is making every reasonable effort to minimise safeguarding risks for children and vulnerable adults who come to the Church or take part in church activities.

PROCEEDINGS IN THE GENERAL SYNOD

12. At the July 2014 group of sessions the Measure was considered by the General Synod at First Consideration Stage. It was committed to a Revision Committee, which met on three occasions in November and December 2014. The Chair of the Revision Committee was Mr Geoffrey Tattersall QC.
13. The Revision Committee invited members of the Minister and Clergy Sexual Abuse Survivors group ('MACSAS') to its first meeting to make oral representations to it before it began its detailed consideration of the Measure. After the first meeting, the representatives of MACSAS sent the Committee written material to consider. They welcomed the general purport of the legislation, and their submissions were given due consideration by the Committee with regard to both the Measure and the Amending Canon.
14. The Measure was subject to detailed revision in Committee and significant amendments were made particularly in relation to the suspension of clergy, churchwardens and members of Parochial Church Councils.
15. At Revision Stage before the General Synod in February 2015 only one amendment was moved. It was of a technical nature, and was carried.
16. At Final Drafting Stage in July 2015 there were no special amendments, but a number of drafting amendments were made which clarified the Measure or otherwise improved the drafting. The Final Approval Stage immediately followed Final Drafting.
17. The voting on the Measure at Final Approval Stage was as follows:

	<i>Ayes</i>	<i>Noes</i>
Bishops	28	0
Clergy	145	0
Laity	149	0

There were no recorded abstentions.

18. The Amending Canon's path was similar to that of the Measure, with First Consideration Stage in July 2014, revision by committee in November and December 2014, Revision Stage in February 2015, and Final Drafting and Final Approval in July 2015.

THE PROVISIONS OF THE MEASURE

Section 1 – Clergy: suspension

19. **Section 1** was inserted at Revision Committee Stage to fill a lacuna in the provisions of the 2003 Measure. Under the 2003 Measure a bishop cannot suspend a cleric who is being investigated by the police or local authority in respect of criminal offences against children or vulnerable adults unless there is an arrest. Section 1 will rectify that.
20. **Section 1(1)** widens the diocesan bishop’s powers under section 36 of the 2003 Measure to suspend clergy from office so that the bishop will be able to impose a suspension if satisfied, on the basis of information provided by a local authority or the police, that a priest or deacon holding preferment in the diocese presents a significant risk of harm to children or vulnerable adults. The meaning of “significant risk of harm” is defined in **section 1(2)**.
21. Before imposing such a suspension the bishop will be required to consult the diocesan safeguarding advisor and any other persons the bishop considers appropriate.
22. The suspension, unless revoked, will expire after three months, but the bishop will be able to renew it for further periods of three months at a time. Under section 36 of the 2003 Measure, the suspended cleric will be able to appeal to the President of Tribunals against the suspension. The right to appeal will protect clerics from being suspended unfairly or wrongfully, and **section 1(9)** will amend the Church of England (Legal Aid) Measure 1994 so that legal aid will be available for legal representation and advice for the purposes of such an appeal (subject, as usual, to the discretion of the Legal Aid Commission pursuant to the 1994 Measure).
23. A similar power of suspension will be given to an archbishop in respect of both a bishop holding office in the archbishop’s province and the other archbishop.

Section 2 – Churchwardens: disqualification and suspension

24. Churchwardens, as officers of the bishop, play an important part at local level in the life and mission of the Church, and in the implementation of the Church’s safeguarding policies. The Church has a responsibility to ensure the protection of children and vulnerable adults when in contact with the Church, and therefore needs to be able to stop those who are unsuitable from a safeguarding perspective from serving as churchwardens.

Disqualification

25. Under section 2(2) of the Churchwardens Measure 2001 a person is disqualified from being elected or serving as a churchwarden if convicted of certain offences mentioned in Schedule 1 to the Children and Young Persons Act 1933 as amended (‘the 1933

Act').¹ A person is also disqualified if disqualified from being a charity trustee under section 178(1) Charities Act 2011 unless he or she is granted a waiver by the Charity Commission. A person can also be disqualified under section 10(6) Incumbents (Vacation of Benefices) Measure 1977 as a result of a pastoral breakdown. However, there is no disqualification under current law of a person who is on a barred list under the Safeguarding Vulnerable Groups Act 2006. **Section 2(1)** of the Measure will introduce such a provision.

26. **Section 2(3)** will amend the Churchwardens Measure 2001 so as to give a bishop power to waive the disqualification of a person who has been convicted of an offence listed in Schedule 1 to the 1933 Act.² The bishop will waive disqualification by a notice in writing, with a copy being served on the diocesan registrar so that a record is kept in the diocese. Before giving a waiver the bishop will be required to consult the diocesan safeguarding advisor and such other persons as the bishop considers appropriate. **Section 2(8)** provides that a churchwarden who vacates office on being disqualified will be able to resume office if the disqualification is waived by the bishop, provided the office has meanwhile remained vacant.
27. **Sections 2(4) and (5)** make consequential amendments to the Churchwardens Measure.

Suspension

28. **Section 2(6)** will amend the Churchwardens Measure 2001 to enable a bishop to suspend a churchwarden who is arrested on suspicion of committing an offence listed in Schedule 1 to the 1933 Act, or is charged with such an offence without being arrested, pending conclusion of the criminal proceedings. The bishop will also have the power to suspend a churchwarden if the bishop is satisfied on the basis of information provided by a local authority or the police that the churchwarden presents a significant risk of harm towards children or vulnerable adults (the risk being defined in terms similar to section 1(2) of the Measure).
29. The bishop's powers to suspend under section 2 of the Measure are therefore targeted at dealing with safeguarding issues. This is to be contrasted with the Churchwardens Measure 2001 in its original form, which was presented to the Ecclesiastical Committee in December 1998. The proposed power of suspension at that time was criticised by the Committee for being too wide because it would have enabled a bishop to suspend a churchwarden for any cause which appeared to the bishop to be good and reasonable.

¹ Schedule 1 to the 1933 Act sets out a range of criminal offences against children and young people under the age of 18, including murder, and offences under the Offences Against the Person Act 1861 and the Sexual Offences Act 2003.

² An assault by a person aged 16 on another person aged 16 would come within Schedule 1 to the 1933 Act; in such circumstances it could be harsh if the assailant were permanently disqualified from holding office as churchwarden – hence the discretionary power for a diocesan bishop to be able to waive disqualifications.

30. Where there is an arrest or a person is charged in relation to an offence listed in the Schedule to the 1933 Act, or where relevant information is provided by the police or local authority, suspension will not be automatic – the bishop will need to exercise discretion in the particular circumstances of each individual case and will be required to specify his or her reasons for imposing the suspension. Where relevant information is received from the police or a local authority, before imposing a suspension the bishop will be required to consult the diocesan safeguarding advisor and such other persons as the bishop considers appropriate.
31. Copies of a notice of suspension will be served on the archdeacon, the rural or area dean, clergy in the parish concerned, the other churchwarden or churchwardens in the parish, each suffragan bishop of the diocese, the diocesan safeguarding advisor, the diocesan registrar, and such other persons as the bishop considers appropriate.
32. Suspensions will last for three months, unless terminated sooner, but will be capable of being renewed by the bishop for further periods of three months at a time. Suspended churchwardens will have the right to appeal to the President of Tribunals against a suspension or its renewal, which would give them redress if a suspension were imposed by a bishop without sufficient reason.
33. **Sections 2(7), and 2(9)** make consequential amendments to the Churchwardens Measure 2001, and **section 2(11)** makes consequential amendments to the Church Representation Rules.
34. **Sections 2(2) and 2(10)** together clarify the position in respect of future amendments that may be made to Schedule 1 to the 1933 Act.

Section 3 – Parochial Church Council members etc.: disqualification and suspension

35. Under the House of Bishops’ policy for safeguarding children (*Protecting all God’s Children*) the Parochial Church Council (‘PCC’) of a parish is jointly responsible with the incumbent for ensuring that diocesan safeguarding policies are implemented in the parish. The Church therefore needs to ensure that all members and officers of PCCs are suitable to discharge that responsibility.

Disqualification

36. **Section 3(1)** of the Measure amends the Church Representation Rules so that safeguarding-related disqualifications will be extended to all lay members of PCCs and to the secretary and treasurer of a PCC. The disqualification provisions will also apply to members of District Church Councils³ and of any deanery or diocesan synod and the General Synod.

³ In a parish with two or more churches or places of worship schemes may provide for the election of a district church council for any district in the parish where there is a church or licensed building.

37. **Section 3(2)** makes consequential amendments to the Church Representation Rules.
38. **Section 3(3)** of the Measure will enable the diocesan bishop to waive a person's disqualification following conviction for an offence mentioned in Schedule 1 to the 1933 Act, provided the bishop first consults the diocesan safeguarding advisor and any other person the bishop considers appropriate, and gives reasons for the waiver in writing. This mirrors the provision in section 2(3) of the Measure applying to churchwardens.

Suspension

39. **Section 3(4)** provides powers of suspension for the diocesan bishop in respect of members of PCCs, District Church Councils and synods, and PCC secretaries and treasurers. The powers are similar to those in section 2 of the Measure with regard to churchwardens. There will be a right of appeal against a suspension or its renewal to the President of Tribunals.
40. **Sections 3(5) to 3(9)** make consequential amendments to the Church Representation Rules. These include revising the notices of annual parochial church meetings and the forms of nomination to diocesan synods, so that grounds for disqualification are set out.

Section 4 – Rules for appeals against suspensions

41. **Section 4** of the Measure makes consequential amendments to the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 ('the 1991 Measure'). It will enable the Rule Committee⁴ to make rules for carrying into effect the provisions in sections 2 and 3 of the Measure relating to appeals against suspension made by churchwardens, by members of PCCs, District Church Councils and synods, and by PCC officers. Section 4(1) will also enable rules to be made in respect of appeals against suspensions imposed on licensed readers and lay workers under Amending Canon No. 34 (see the Appendix to these Comments and Explanations for provisions relating to the suspension of licensed readers and lay workers).

Section 5 – Guidance

42. The Church of England's safeguarding policies are set out by the House of Bishops in publications such as *Protecting All God's Children* and *Promoting a Safe Church*⁵. They provide guidance and aim to highlight good practice and standards.

⁴ The Rule Committee is constituted under section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. Under section 26 of that Measure the Rule Committee may make rules for carrying into effect the provisions of certain specified Measures.

⁵ *Protecting All God's Children* sets out the policy for safeguarding children in the Church, and *Promoting a Safe Church* sets out the policy for safeguarding adults in the Church.

43. There is currently no general duty on office holders to have due regard to the Church’s safeguarding policies. **Section 5(1)** will therefore create a new duty to that effect. (It is not unusual for Westminster legislation to impose a duty to ‘have regard’ or to ‘have due regard’ to guidance⁶; and the same approach has been taken previously in Church legislation, a duty to ‘have due regard’ having been imposed in at least four other Measures⁷.)
44. In accordance with usual legal principles in relation to duties of this kind, section 5(1) will require those to whom it applies to acquaint themselves with the guidance, to take it into account in decision-making where it is relevant and to depart from it only where they have ‘cogent’ reasons for doing so. That is different from imposing a duty to comply with the guidance.
45. **Section 5(2)** will place the new duty on all ordained clergy authorised by a bishop to exercise ministry, all archdeacons, bishops, licensed readers and lay workers, churchwardens and PCCs.
46. **Section 5(3)** will amend the 2003 Measure so that it will be misconduct for a clerk in Holy Orders to fail to comply with the duty to have due regard to the House of Bishops’ safeguarding guidance. Section 5(3) makes explicit what would be the case anyway: failure to have due regard to the House of Bishops’ guidance would amount to ‘misconduct’ for the purposes of the 2003 Measure as a result of s.5(1), because misconduct in section 8(1)(b) includes “*failing to do any act required by the laws ecclesiastical*”.
47. The rationale for making the position explicit in section 5(3) is that the Church needs to put in place, and to be seen to put in place, effective methods for dealing with safeguarding issues, so that those who have suffered abuse and the public can be reassured that the Church takes such matters seriously. Making the position explicit will help achieve that aim, and will also provide greater clarity about the position to clergy – all of whom, whether bishops or parish clergy, are expected to play their part in helping to implement the Church’s safeguarding policies.
48. If a cleric were to choose to ignore the guidance completely, he or she would deserve to be called to account under the 2003 Measure. However, if a cleric did have regard to the guidance but consciously departed from it for cogent reasons, that would not be misconduct. In individual cases the question could arise as to whether the grounds of any departure were ‘cogent’; but Vicar-General’s Courts and bishop’s disciplinary

⁶ For example, section 17(5) of the Charities Act 2011 provides that “The charity trustees of a charity must have regard to any such guidance [i.e. guidance issued by the Charity Commission] when exercising powers or duties to which the guidance is relevant.” and paragraph 10(6) of Schedule 3 to the Safeguarding and Vulnerable Groups Act 2006 provides that “[the Disclosure and Barring Service] must have regard to guidance issued by the Secretary of State as to conduct which is inappropriate.”

⁷ Section 6(2) of the Church of England (Miscellaneous Provisions) Measure 1976; section 1(8) of the Church of England Marriage Measure 2008; section 8(5) of the Ecclesiastical Offices (Terms of Service) Measure 2009; section 84(5) of the Mission and Pastoral Measure 2011.

tribunals will be well placed to make judgments, based on all the circumstances of a particular case, as to whether a departure from the guidance is justified. Furthermore, such courts and tribunals will also have a range of sanctions available to them under sections 24 and 25 of the 2003 Measure so that, depending on the circumstances, they will properly be able to reflect the severity (or otherwise) of the misconduct.

49. **Section 5(4)** will amend the Church Representation Rules so that a PCC's annual report must include a statement as to whether the council has complied with the duty.

Section 6 – Meaning of ‘child’ and ‘vulnerable adult’

50. **Sections 6(1) and 6(2)** define ‘child’ and ‘vulnerable adult’ for the purposes of the Measure. The meaning of ‘child’ is without controversy, and section 6(1) follows the generally accepted definition.
51. The term ‘vulnerable adult’ has no universally accepted definition. It has been defined in different ways in both legislation and guidance, depending on the particular purposes and contexts. The definition of vulnerable adult provided in section 6(2) of the Measure is intended to be specific as to the type of harm that could render someone vulnerable. Violence, abuse, neglect and exploitation are all specifically covered in the definition, and a person’s emotional fragility and distress are expressly taken into account.
52. **Sections 6(3) to 6(8)** of the Measure will enable the Archbishops’ Council to amend the definition of ‘vulnerable adult’. This provision is required because the area of safeguarding is constantly developing and changing. The definition may need to be amended timeously in the light of experience, and to ensure that it keeps up with developments, including any relevant future changes in secular legislation.
53. The power to amend in section 6(3) is narrow in terms of its scope, being limited to the amendment of the definition alone. The Archbishops’ Council would only exercise the power after careful consideration. Under **section 6(4)** any proposed new definition would be subject to the approval of the General Synod, which would have the power to amend the Council’s proposals. Requiring Synod’s approval in this way will provide appropriate scrutiny of the use of the power.
54. An alternative approach would have been to define the term ‘vulnerable adult’ in secondary legislation, so that it would be relatively easy to amend. However, on the grounds of transparency and to enable changes to be made more quickly, the definition was included in the Measure with the power to amend conferred on the Archbishops’ Council by section 6(3). The only other alternative would have been to use primary legislation to amend the definition – a complex and slow process, which would have been undesirable.

Section 7 – Removal of limitation period in sexual misconduct cases

55. Where a complaint alleges misconduct of a sexual nature towards a child or vulnerable adult, **section 7** will remove the one year limitation period in section 9 of the 2003 Measure for bringing the complaint. Under the existing provisions of section 9 of the 2003 Measure, such complaints can be made after one year has lapsed only if the President of Tribunals upon an application made to the President grants permission to make the complaint out of time; the President in such cases has to be satisfied that there was good reason why proceedings were not instituted at an earlier date.
56. The one year limitation period has been criticised for inhibiting those who have suffered abuse from making complaints, since it may take many years before they are ready and able to come forward; and under the current law, when they do come forward, there is a barrier in their way which must be cleared before a complaint can be presented.
57. Section 7 of the Measure will enable a complaint made outside the normal limitation period to proceed if the alleged misconduct in question is of a sexual nature either towards a child, or towards a person whom the President determines was a vulnerable adult at the time of the misconduct.⁸
58. If the President decides the relevant person was not vulnerable, section 7(1) will enable a complaint to continue if the President is satisfied there was nonetheless good reason why the complaint was not made in time. This will have two advantages: first, a complainant will not have to make a separate application under section 9 of the 2003 Measure for permission to make the complaint out of time if the President determines there was no vulnerability; and, second, any suspension already imposed by the bishop will not lapse but will continue.
59. By virtue of **section 7(2)** section 7(1) will apply in respect of relevant misconduct committed before the Measure comes into force, even if the limitation period of 1 year has meanwhile lapsed.

Section 8 – Application to make complaint out of time: power to suspend

60. A bishop currently has no power under the 2003 Measure to suspend a cleric when an application is made to the President of Tribunals for permission to make a complaint out of time, regardless of the seriousness of the allegations. **Section 8** will correct this omission, and will apply not only to complaints in respect of sexual misconduct but also to complaints alleging other misconduct.

⁸ The intention is that, before section 7 is brought into force, the Clergy Discipline Rules will be amended to provide that when a bishop receives a complaint about sexual misconduct after more than one year has elapsed since the events in question, the bishop will be required to refer the matter to the President for a determination about vulnerability, where relevant. The respondent will have an opportunity to make representations to the President on the issue of vulnerability.

61. **Section 8(1)** applies to priests and deacons and will add a new section 36A to the 2003 Measure. The new power of suspension will be subject to certain conditions. The new section 36A(3) in the 2003 Measure will require the bishop to be satisfied that a suspension of a priest or deacon is *necessary*. Under the new section 36A(4) and 36A(5) before the bishop imposes a suspension the bishop will have to seek advice from the diocesan registrar on whether the complainant has a proper interest, whether there is sufficient substance to the complaint, and whether a suspension is necessary in all the circumstances of the case.
62. The new section 36A(6) to 36A(11) will make provision for the revocation and termination of the suspension, and for its renewal when appropriate. By applying certain provisions in section 36 of the 2003 Measure, the new section 36A(12) will enable the bishop to make arrangements for the parish whilst the suspension is in place, and will give the respondent an important means of redress by way of a right to appeal against the suspension to the President of Tribunals.
63. **Section 8(2)** adds a new section 37A to the 2003 Measure to make similar provision in respect of the suspension of an archbishop or bishop, pending an application to the President of Tribunals for permission to make a complaint out of time against the archbishop or bishop. Where a suspension relates to an archbishop, the other archbishop will be required to obtain the consent of the two most senior diocesan bishops in the other archbishop's province.

Section 9 – Registrar of Tribunals: delegation of functions

64. **Section 9** will enable the two provincial Registrars of Tribunals to delegate their functions under the 2003 Measure to any person, provided the President of Tribunals consents. Under the existing terms of section 5(7) of the 2003 Measure they can only delegate to each other⁹ – which would be problematic in any complaint proceedings if they both needed to avoid involvement on professional or personal grounds. Section 9 will avoid such difficulties.

Section 10 – President of Tribunals: power to remit to bishop

65. This amendment relates to a procedural matter, concerning sections 11(4) and 13(3) of the 2003 Measure, and requests by a complainant for a review by the President of Tribunals of a bishop's determination of a complaint. Section 11(4) covers complaints that have been dismissed by the bishop, and section 13(3) concerns complaints where the bishop has determined to take no further action.¹⁰

⁹ Section 5(7) of the 2003 Measures reads: "If a 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."

¹⁰ The difference between dismissing a complaint and taking no further action on a complaint is that a dismissal takes place at the preliminary scrutiny stage, whereas a determination that there is to be no further action is made at a later stage after a respondent has been invited to submit an Answer to the complaint.

66. Under sections 11(4) and 13(3) of the 2003 Measure on a review the President can either uphold the bishop's decision or, if the President considers the bishop is plainly wrong, direct the bishop to consider the complaint in accordance with the next stage of the proceedings. There is no power for the President to remit the matter back to the bishop for further consideration of whether to dismiss the complaint or take no further action on it, in the light of guidance issued by the President. **Section 10** will fill the lacuna by providing for the President a power to remit the complaint back to the bishop.

Section 11 – Provincial panels: reappointment of legally qualified persons

67. This changes the position relating to the appointment of legally qualified persons to chair disciplinary hearings under the 2003 Measure. At present Chairs are not eligible to be re-appointed at the end of their second period of six years – experienced Chairs, who are difficult to replace, therefore have to retire unnecessarily.
68. **Section 11** will enable a tribunal Chair to serve for more than two terms of office.

Section 12 – Short title, commencement and extent

69. **Section 12** deals with the citation of the Measure, commencement and extension of the Measure to the Channel Islands and the Isle of Man.

PRINCIPAL MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

Revision Committee Stage

Section 1 – Clergy: suspension

70. A member of the Revision Committee submitted that a bishop's powers of suspension of clergy under section 36 of the 2003 Measure were too limited, and should be widened so that a bishop could suspend when a priest or deacon was being investigated by the police or other statutory agency for alleged criminal offences against children and vulnerable adults. The member argued that there were cases where bishops had to invite clerics to step back from ministry, because they were powerless to suspend despite having real safeguarding concerns about them. This was unsatisfactory.
71. The Revision Committee agreed there should be a power of suspension if the bishop received information from the police or a local authority that led the bishop to be satisfied that the person concerned presented a significant risk of harm to children or vulnerable adults, but where there had so far been no arrest or charge. It therefore agreed to amend the Measure by inserting a new **section 1** to give the bishop power under section 36 of the 2003 Measure to impose a suspension in these circumstances.

Section 2 – Churchwardens: disqualification and suspension

Section 2(1) – disqualification as churchwarden

72. A member of the House of Clergy and two members of the House of Laity made similar submissions that **section 2(1)** should be removed. They contended that it would rely on self-disclosure by those who were disqualified, and would therefore be ineffective because those concerned were unlikely to declare they had been barred from working with children and/or vulnerable adults under the Safeguarding and Vulnerable Groups Act 2006 ('the SVGA'). Consequently, section 2(1) would not have the desired outcome of excluding unsuitable candidates from holding office.
73. The Steering Committee resisted the proposed removal of section 2(1). It recognised that self-disclosure was not fail-safe, but considered that it would be an improvement on the existing position – under which it was lawful for persons to serve as churchwardens despite being included in a barred list under the SVGA.
74. The Revision Committee agreed with the Steering Committee and resolved that it was important to keep section 2(1) even if it relied on self-disclosure.

Section 2(3) – waiver of disqualification as churchwarden

75. A member of the Revision Committee proposed that the waiver provisions in **section 2(3)** needed to be clarified as to whether a waiver was permanent or time limited, and whether a waiver was to be confined to the diocese in question or binding on all other dioceses across the church.
76. The Steering Committee agreed that section 2(3) needed to be clarified. It proposed that a waiver should be permanent, and that it should not be confined to the diocese in question but should bind other dioceses. That was desirable from the point of view of certainty and consistency – it would be undesirable if bishops could override decisions made by their predecessors or by fellow bishops in other dioceses. The Revision Committee agreed with the Steering Committee and resolved to amend section 2(3) accordingly.
77. The Revision Committee bore in mind in this connection oral submissions that it had received from the MACSAS representatives that too much reliance would be placed on an individual bishop's discretion in the exercise of the power to grant a waiver, and that disqualification should not be waived except in exceptional circumstances. Having considered all the submissions carefully the Revision Committee agreed that section 2(3) should be amended to require a bishop to consult the diocesan safeguarding advisor and such other persons as the bishop considered appropriate before waiving a disqualification in respect of churchwardens and PCC members. The Revision Committee further agreed that the bishop should state in writing the reasons for granting a waiver.

Section 2(6) – suspension of churchwardens

78. A member of the Revision Committee proposed that the bishop’s power to suspend churchwardens in **section 2(6)** should be widened so that a bishop could suspend a churchwarden when the churchwarden was being investigated by the police or other statutory agency in relation to safeguarding offences.
79. Churchwardens are ex-officio members of their PCC. The Revision Committee considered that, since PCCs had joint responsibility with the incumbent or priest in charge for implementing the House of Bishops’ safeguarding policy at parish level, it would be undesirable if a bishop were unable to suspend a churchwarden on receiving information from the police or a local authority that led the bishop to be satisfied that the person concerned presented a significant risk of harm to children or vulnerable adults. The Revision Committee therefore agreed to amend section 2(6) to give the bishop power to suspend in such circumstances, even where there had so far been no arrest or charge, provided the bishop consulted the diocesan safeguarding advisor and such other person(s) as the bishop considered appropriate.

Section 3: Parochial Church Council members etc.: disqualification or suspension

Section 3(1) – disqualification from the PCC etc

80. Similar submissions to those relating to section 2(1) of the Measure were made to the effect that **section 3(1)** should be removed, namely that section 3(1) would be ineffective in attempting to prevent SVGA barred persons from serving on a PCC because it would rely on self-disclosure. It was submitted that this was particularly the case with the election of PCC members because, unlike churchwardens, they were not required to declare that they were not disqualified, and many candidates for election to the PCC would not even know if they were disqualified.
81. The Revision Committee declined to remove section 3(1) on the ground that, as in the case of section 2(1), if it were removed it would continue to be lawful for barred persons to be eligible to serve on PCCs, which was most undesirable given the role of PCCs at local level in implementing the House of Bishops’ safeguarding policies.

Section 3(3) – waiver of disqualification from the PCC etc

82. Submissions in respect of **section 3(3)** of the Measure vis a vis PCC members were made which were similar to those in respect of the corresponding provisions for churchwardens under section 2(3). In response to those submissions the Revision Committee made like for like revisions to section 3(3) of the Measure for the same reasons as for section 2(3).

Section 3(4) – suspension of membership of the PCC etc

83. Similar submissions to those made in respect of section 2(6) with regard to the suspension of churchwardens were made in respect of section 3(4). Since PCCs have joint responsibility with the incumbent priest for implementing the House of Bishops' safeguarding policy at parish level, the Revision Committee agreed that the provisions in **section 3(4)** relating to the suspension of members of PCCs, District Church Councils and synods should be amended to correspond with those in section 2(6) vis a vis churchwardens.
84. The Revision Committee also considered a proposal from a member of the House of Clergy that section 3(4) be widened in scope so that officers of the PCC could be suspended by the bishop. The member argued that unless the proposed amendment was made, it would be possible for a person to be suspended from the PCC following arrest on suspicion of committing an offence listed in Schedule 1 to the 1933 Act but continue to act as secretary or treasurer – that would be anomalous and undesirable. The Revision Committee agreed with the submission and duly amended the provision.

Section 5 – House of Bishops' Guidance

Section 5(1) – duty to have due regard

85. A member of the House of Clergy and a member of the House of Laity both questioned the enforcement of the proposed duty upon churchwardens and PCCs to have due regard to the House of Bishops' guidance. They queried how compliance with the new duty could be monitored and were uneasy about an obligation being enacted that had no obvious means of enforcement.
86. The Legal Office advised the Revision Committee that, although the Measure did not provide for the imposition of sanctions on a churchwarden or PCC, that did not mean that the duty imposed upon them would be disregarded or that the provision itself would be ineffective. The Revision Committee was advised that there were a number of examples in various Measures where a duty 'to have due regard' was imposed on certain officers or bodies with no accompanying power to impose sanctions on them in the event of default, without rendering those provisions ineffective. The Revision Committee noted that, in any event, PCCs were charities, and were subject to investigation and regulation by the Charity Commission (including being subject to the exercise of protective and remedial powers) if they culpably failed to safeguard children and vulnerable adults within the Church locally; PCCs were bodies used to complying with statutory duties imposed on them. Furthermore, churchwardens who departed from guidance without good reason might find it difficult to obtain support to be re-nominated and re-elected – in that way the electoral process could provide its own enforcement mechanism.

87. The Revision Committee agreed that imposing a specific statutory duty on churchwardens and PCCs to have due regard to guidance from the House of Bishops sent out a strong message that the Church took safeguarding issues seriously. It resolved to retain the duty imposed on churchwardens and PCCs.
88. The Revision Committee noted that registered charities were required to declare whether they had complied with their duty under the Charities Act 2011 to have due regard to the Charity Commission’s guidance on public benefit. Building upon that principle the Revision Committee agreed to amend Part 2 of the Church Representation Rules to provide that a PCC must include a statement in its annual report as to whether the council had complied with the duty under section 5 of the Measure to have due regard to the House of Bishops’ safeguarding guidance.

Section 5(2) – relevant persons

89. A member of the House of Clergy proposed that the list in **section 5(2)** of the persons who would be subject to the new duty to have due regard to the House of Bishops’ guidance should be extended to cover everybody in the Church – including bishops, priests, deacons, readers, licensed lay ministers, youth workers, Sunday school teachers, organists, choir leaders, churchwardens, PCC members, and all worshippers. In oral submissions the member argued that a church should be a safe place to go to, and that was why everyone in church should be subject to the duty to have due regard to the guidance. The member was concerned at the possibility of reputational damage to the Church if it were perceived to be failing to take safeguarding matters sufficiently seriously.
90. The Steering Committee opposed the amendment. Whilst agreeing that the responsibility for ensuring a safe Church rested on the whole Church, it believed the proposal was unworkable because it would require everyone, including a worshipper visiting a church for the first time, to have due regard to the guidance issued by the House. The House’s guidance was not aimed, and should not be aimed, at members of the Church generally, let alone those who might from time to time attend its services or other events it organised – the guidance was aimed at those who held relevant positions, which at local level was the incumbent and the PCC acting jointly. The Revision Committee agreed with the Steering Committee and rejected the proposed amendment.

Section 6 – meaning of ‘child’ and ‘vulnerable adult’

Section 6(2) – meaning of vulnerable adult

91. A member of the House of Clergy made a submission pointing out that the definition of ‘vulnerable adult’ in **section 6(2)** was different from the definition used in *Promoting a Safe Church* (the House of Bishops policy for safeguarding adults),¹¹ and argued that it could be confusing to have two different definitions. In the alternative the member

¹¹ *Promoting a Safe Church* defines a vulnerable adult as: “Any adult aged 18 or over who, by reason of mental or other disability, age, illness or other situation is permanently or for the time being unable to take care of him or herself, or to protect him or herself against significant harm or exploitation.”

submitted that although the definition in **section 6(2)** appeared to cover cases of temporary vulnerability, it would be prudent to define vulnerability so that it expressly included temporary vulnerability as well as permanent vulnerability.

92. The Steering Committee advised the Revision Committee that it was content for the definition in the Measure to be different from that used in *Promoting a Safe Church*. The former definition was intended to be wider in scope than the latter, and was more specific as to the type of harm that could render someone vulnerable. Violence, abuse, neglect and exploitation were all expressly covered in the definition in the Measure, and it also took account of a person's emotional fragility and distress. The Steering Committee hoped that in due course the definition in *Promoting a Safe Church* would be revised so that it matched that in the Measure. The Steering Committee did, however, support the proposal that the definition should expressly take account of *temporary* vulnerability.
93. The Revision Committee agreed with the Steering Committee and resolved to reject the submission that the definition of vulnerable adult in section 6(2) should be the same as in *Promoting a Safe Church*. In line with the Steering Committee's recommendation it accepted the alternative submission that section 6(2) should be amended to clarify that temporary and permanent vulnerability were both included.

Section 7 – removal of limitation period in sexual misconduct cases

Section 7(1)

94. The Measure in the form it took when being considered by the Revision Committee would, in certain cases, have required bishops to make judgments as to whether sexual misconduct had been committed towards vulnerable adults. One member of the House of Clergy made a submission arguing that issues of vulnerability would not be capable of proper determination at the time a complaint was issued because the bishop's determination about vulnerability would be made without any input from the respondent, and therefore the full facts would not be known to the bishop at that stage.
95. The member therefore submitted that the limitation period should be removed for complaints of sexual misconduct towards children and vulnerable adults but there should be a procedure allowing the respondent to make submissions to the bishop on the issue of vulnerability. The bishop could then make a determination as to whether or not the victim had been vulnerable at the relevant time, with the respondent having a right to seek a review from the President of Tribunals on the ground that the bishop was 'plainly wrong' (i.e. the same test as in section 11(4) and section 13(3) of the 2003 Measure).
96. A member of the Revision Committee proposed that **section 7(1)** should remove the limitation period for all complaints alleging any kind of abuse (whether sexual, physical, emotional or spiritual abuse) of children and vulnerable adults. He contended that abuse was not limited to sexual misbehaviour alone, but could involve other physical harm, or emotional or spiritual abuse. In oral submissions to the Committee

he emphasised that emotional and spiritual abuse could be just as damaging as physical harm.

97. Another member of the House of Clergy proposed the limitation period should be removed in respect of all complaints alleging any kind of abuse, whether committed against children or adults regardless of vulnerability. He argued that abuse was abuse whether the person concerned was vulnerable or not.
98. The Steering Committee advised the Revision Committee that survivors of abuse generally regarded sexual abuse as being in a different category from other types of abuse. For that reason the Steering Committee was in favour of removing the limitation period only in cases of sexual misconduct. It took the view that removing the limitation period in the case of all complaints of abuse, even where the victim was not vulnerable at the time, would be unworkable – it would remove the limitation period from a very wide area, thereby enabling many different types of complaint to be brought countless years after the events in question.
99. The Revision Committee acknowledged there was good reason generally for the limitation period, but agreed that sexual abuse was different from other forms of abuse. The Revision Committee recognised that in cases of other forms of abuse, such as psychological, emotional or spiritual abuse, there was a risk that the complaints procedure could be misused by complainants many years after the alleged misconduct. The Revision Committee noted, however, that complaints alleging other forms of abuse could be made under section 9 of the 2003 Measure after one year had lapsed where there was good reason why the complainant did not institute proceedings earlier.
100. The Revision Committee accepted that the limitation period should be removed in cases of sexual misconduct towards children and vulnerable adults save that it resolved that the President of Tribunals, rather than the bishop, would decide the issue of vulnerability. Consequently when a bishop received a complaint about sexual misconduct after more than one year had elapsed since the events in question, if issues of vulnerability arose the bishop would be required to submit the complaint to the President, and the respondent would have the opportunity to make representations to the President on the issue of vulnerability. This would ensure consistency across the dioceses.
101. The Revision Committee considered whether there should be a right of appeal against the decision of the President of Tribunals on the issue of vulnerability. It noted that under the 2003 Measure there was no appeal mechanism in respect of any decision made by the President. Furthermore, if the President ruled against a complainant on the issue of vulnerability, the complainant would still be able to make a complaint if there was good reason why the complaint had not been brought earlier. The Revision Committee therefore rejected the idea of there being an appeal against the President's determination on vulnerability.

Revision Stage

102. At Revision Stage in February 2015 only one amendment was moved. It was of a technical nature, and was welcomed by the Steering Committee. It related to section 7(1) of the Measure, and its effect was to enable a complaint issued outside the normal one year limitation period to continue notwithstanding the President of Tribunals had decided that the complainant was not a vulnerable adult, provided the President was satisfied there was good reason for making the complaint out of time. The amendment was carried.

On behalf of the Legislative Committee

P. N. E. Bruinvels
Canon Peter N. E. Bruinvels
Deputy Chairman

September 2015

APPENDIX

Summary of the main provisions of Amending Canon No. 34

Amending Canon No. 34 will amend the Canons of the Church of England in the following ways:

1. It will amend Canon B 43 ('Of relations with other churches') so that an incumbent may invite a minister or lay person from another church to perform certain duties at services only if the incumbent is satisfied, having made appropriate enquiries, that the person is of good standing.
2. It will amend Canon C 8 ('Of ministers exercising their ministry') so that:
 - Clergy of the Church of England may only be permitted by a minister with the cure of souls to minister in his or her church if they have authority from a bishop to minister in a diocese;
 - Clergy who have no authority to officiate, or who are prohibited or suspended under the 2003 Measure, will not be permitted to vest during divine service. A minister with the cure of souls who knowingly permits such a person to vest will commit misconduct under the 2003 Measure;
 - All ministers with authority to officiate in a diocese will be required to participate in arrangements approved by the diocesan bishop for training in matters relating to the safeguarding of children and vulnerable adults.
3. It will introduce a new Canon, C 30 ('Of safeguarding') so that:
 - Each diocesan bishop must appoint a diocesan safeguarding advisor to advise the bishop on matters relating to the safeguarding of children and vulnerable adults;
 - The House of Bishops may make provision to regulate eligibility for appointment as a diocesan safeguarding advisor, and to confer functions on diocesan safeguarding advisors;
 - An archbishop may direct the other archbishop or a bishop holding office in the province to undergo a risk assessment¹² where satisfied it is justified in all the circumstances to do so;

¹² A 'risk assessment' is defined for this purposes as an assessment of whether there is a significant risk that the person concerned may: (a) harm a child or vulnerable adult; (b) cause a child or vulnerable adult to be harmed; (c) put a child or vulnerable adult at risk of harm; (d) attempt to harm a child or vulnerable adult, (d) incite another person to harm a child or vulnerable adult.

- A diocesan bishop may direct a priest or deacon with authority to officiate in the diocese to undergo a risk assessment;
- A failure to comply with the direction for a risk assessment without reasonable excuse will be regarded as misconduct under section 8(1) of the 2003 Measure.
- A cleric to whom a risk assessment direction is given may request the President of Tribunals to review the direction, and the President may revoke the direction if the direction was plainly wrong.
- The House of Bishops must make provision by Regulations about the carrying out of risk assessments, in particular as to: (a) the persons who may carry out a risk assessment, (b) the procedure for carrying out a risk assessment, and (c) the procedure for challenging the outcome of a risk assessment. Any such Regulations will be laid before the General Synod and will not come into force unless and until they have been approved by the General Synod.

4. It will amend Canon E 6 ('Of the licensing of readers') so that:

- The diocesan bishop may suspend a reader's licence pending a decision on whether to revoke the licence;
- Before revoking a licence the bishop must consult the diocesan registrar;
- The diocesan bishop may not license a reader unless the bishop is satisfied that the candidate has undergone suitable training relating to the safeguarding of children and vulnerable adults;
- The diocesan bishop must ensure there are arrangements in place to provide readers with suitable training relating to the safeguarding of children and vulnerable adults;
- A person is disqualified from exercising the office of reader if convicted of an offence mentioned in Schedule 1 to the 1933 Act, or included in a barred list under the Safeguarding Vulnerable Groups Act 2006;
- The diocesan bishop may waive a disqualification arising from a conviction for an offence mentioned in Schedule 1 to the 1933 Act, subject to consulting the diocesan safeguarding advisor and such other persons as the bishop considers appropriate;
- The diocesan bishop will have the power to suspend a reader who is arrested for or charged with an offence mentioned in Schedule 1 to the 1933 Act, or if the

bishop is satisfied on the basis of information provided by the police or a local authority that the reader presents a significant risk of harm¹³;

- Before suspending a reader the bishop must consult the diocesan safeguarding advisor and such other persons as the bishop considers appropriate;
 - A reader's suspension may be for up to 3 months, subject to renewal;
 - A suspended reader may appeal against suspension or renewal of suspension to the President of Tribunals, who may revoke it;
 - A reader whose licence is revoked or suspended may not vest during divine service.
5. It will make amendments to Canon E 8 ('Of the admission and licensing of lay workers') corresponding to the amendments made to Canon E 6 described in paragraph 4 above.

¹³ A person 'presents a significant risk of harm' for this purpose if there is a significant risk that the person may: (a) harm a child or vulnerable adult; (b) cause a child or vulnerable adult to be harmed; (c) put a child or vulnerable adult at risk of harm; (d) attempt to harm a child or vulnerable adult, (d) incite another person to harm a child or vulnerable adult.