HOUSE OF LORDS
HOUSE OF COMMONS

Ecclesiastical Committee

231st Report

Diocese in Europe Measure

Clergy Discipline (Amendment) Measure

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The Ecclesiastical Committee

The Ecclesiastical Committee is a statutory Committee appointed under the Church of England Assembly (Powers) Act 1919 ("the Act").

It comprises thirty members, fifteen of whom are Members of the House of Commons, appointed by the Speaker, and fifteen of whom are members of the House of Lords, appointed by the Lord Speaker. The quorum is twelve.

Appointments to the Committee are generally made early in a Parliament. Unless the Speaker or the Lord Speaker decide otherwise, members appointed by them remain on the Committee for the life of the Parliament.

While its powers are those laid down by the Act, the procedures it has adopted are those of a Joint Select Committee.

Current Membership

HOUSE OF LORDS	HOUSE OF COMMONS
Lord Bilston	Sir Tony Baldry
Baroness Butler-Sloss	Sir Peter Bottomley
Lord Davies of Coity	Rt Hon Ben Bradshaw
Lord Elton	Rt Hon Frank Field
Lord Glenarthur	Helen Goodman
Lord Griffiths of Burry Port	Sir Alan Haselhurst
Baroness Jolly	Sharon Hodgson
Lord Judd	Rt Hon Simon Hughes
Lord Laming	Rt Hon David Lammy
Lord Lloyd of Berwick	Gordon Marsden
Lord Luke	Patrick Mercer
Baroness Perry of Southwark	Laura Sandys
Lord Shaw of Northstead	Andrew Selous
Lord Walpole	Gary Streeter

Remit

The Ecclesiastical Committee examines draft Measures presented to it by the Legislative Committee of the General Synod of the Church of England. It reports to Parliament on whether or not it considers the measures to be expedient.

It generally asks members of the General Synod to assist it in its deliberations. In some circumstances a conference of the Ecclesiastical Committee and the Legislative Committee may be convened.

The Church of England Measure on which the Committee has reported is presented to both Houses in its final form at the same time as the Committee makes its report which is laid under the Act.

Before the Measure becomes law, both Houses must approve motions that the Measure should be presented to the Sovereign for Royal Assent in the form that it was laid before Parliament.

Once both Houses have passed the necessary approval motions, the Measure is presented for Royal Assent and becomes law.

Publications

The reports and proceedings of the Committee are published by The Stationery Office by Order of both Houses. All publications of the Committee are on the internet at www.parliament.uk

Contacts

All correspondence should be addressed to the Secretary of the Ecclesiastical Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number for general enquiries is 020 7219 3152.

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231ST REPORT BY THE ECCLESIASTICAL COMMITTEE

1. The Ecclesiastical Committee has met and considered the Diocese in Europe Measure and the Clergy Discipline (Amendment) Measure referred to the Committee under the provisions of the Church of England Assembly (Powers) Act 1919.

2. The **Diocese in Europe Measure** makes provision for the funding of the development of the diocese's mission and for the way in which Article 8 of the Constitution of the General Synod applies in the diocese.

3. Section 1 of the Measure makes provision enabling the Church Commissioners for England and the Archbishops' Council to make payments to the Diocese in Europe for the development of its mission.

4. Section 2 of the Measure amends Article 8 of the Constitution of the General Synod so that business referred for approval under Article 8 is considered by the diocesan synod of the Diocese in Europe, rather than the bishop's council and standing committee of the diocese. This brings the arrangements for the Diocese of Europe into line with those for all other dioceses of the Church of England in this regard.

5. The Comments and Explanations printed with this report give further details of the provisions of the Diocese in Europe Measure and the background to the Measure. A transcript of the Committee's proceedings with representatives of the Church of England is printed with this report.

6. **The Committee is of the opinion that the Diocese in Europe Measure is expedient.**

7. The **Clergy Discipline (Amendment) Measure** makes a number of changes to the Clergy Discipline Measure 2003 ("the 2003 Measure").

8. Section 1 of the Measure amends section 8 of the 2003 Measure so that it will be unbecoming or inappropriate conduct for a cleric to be a member of, or to promote, or express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared to be incompatible with the teachings of the Church of England in relation to race equality.

9. Section 3 of the Measure makes provision about appeals, including provision that a party wishing to appeal, following a determination in a bishop's disciplinary tribunal or a Vicar-General's Court, will no longer have an automatic right of appeal but will require leave to appeal.

10. Sections 4 to 7 confer increased powers for the removal, or suspension, of a cleric from office following criminal conviction, or inclusion in a barred list established under the Safeguarding Vulnerable Groups Act 2006.

11. The remaining sections of the Measure make a number of minor, consequential or technical amendments to the 2003 Measure and related Measures.

12. The Comments and Explanations printed with this report give further details of the provisions of the Clergy Discipline (Amendment) Measure and the background to the Measure. A transcript of the Committee's proceedings with representatives of the Church of England is printed with this report.

13. **The Committee is of the opinion that the Clergy Discipline (Amendment) Measure is expedient.**

MINUTES OF PROCEEDINGS

Wednesday 16 January 2013

Minutes of the meeting of the Ecclesiastical Committee held on Wednesday 16 January 2013 at 4.30pm in Committee Room 4A, House of Lords.

Present:

Lord Bilston
Baroness Butler-Sloss
Lord Davies of Coity
Lord Elton
Lord Glenarthur
Lord Griffiths of Burry Port
Baroness Jolly
Lord Judd
Lord Laming
Lord Lloyd of Berwick
Baroness Perry of Southwark
Lord Shaw of Northstead
Lord Walpole

Sir Tony Baldry MP
Sir Peter Bottomley MP
Ben Bradshaw MP
Helen Goodman MP
Simon Hughes MP
Gordon Marsden MP
Andrew Selous MP

Lord Lloyd of Berwick in the Chair.

Mr Peter Milledge, Counsel to the Chairman of Committees, in attendance.

Diocese in Europe Measure

The following representatives of the General Synod assisted the Committee in its deliberations:

The Rt Revd Geoffrey Rowell (Bishop of Gibraltar in Europe)
Mr Robert Key (Member of the House of Laity of the General Synod)
Mr William Fittall (Secretary General)
The Venerable Christine Hardman (Synod Representative)
Ms Saira Salimi (Deputy Official Solicitor, the Church of England)

The Committee deliberated.

It was moved that the Diocese in Europe Measure be deemed expedient.

The motion was agreed to.

Clergy Discipline (Amendment) Measure

The following representatives of the General Synod assisted the Committee in its deliberations:

Rt Rev Christopher Hill (Lord Bishop of Guildford)
Rt Worshipful Charles George QC (Dean of the Arches and Auditor)
Mr William Fittall (Secretary-General, General Synod)
The Venerable Christine Hardman (Synod Representative)
Adrian Iles (Designated Officer, Church of England)

The Committee deliberated.

It was moved that the Clergy Discipline (Amendment) Measure be deemed expedient.

The motion was agreed to.

The Committee adjourned.

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE DIOCESE IN EUROPE MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Diocese in Europe Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

2. The Diocese in Europe Measure confers a new power on the Church Commissioners for England and Archbishops' Council to make payments to the Diocese in Europe, modifies the application of the National Institutions Measure 1998 and amends the Constitution of the General Synod set out in Schedule 2 to the Synodical Government Measure 1969. It also makes a consequential repeal of section 3 of the Diocese in Europe Measure 1980.

BACKGROUND TO THE MEASURE

3. The Diocese in Europe ("the Diocese") was created in 1980. It is a diocese of the Church of England, and is treated for purposes of representation on the General Synod as a diocese in the Province of Canterbury. However, it is necessarily different in many ways from all other dioceses. It is not governed by English law, although by virtue of the Constitution of the Diocese the canons and other ecclesiastical law of the Church of England are applied to it (so far as applicable, and subject to certain modifications and exceptions). Save for certain very limited purposes the body of statute law applicable to the Church of England does not apply to the Diocese.

4. Most pertinently by way of background to this Measure, the Diocese is not part of the Established Church (because, outside England and Wales, it is not "by law established") and does not have geographical "parishes" (it has chaplaincies instead), and therefore the power of the Church Commissioners for England ("the Commissioners") and the Archbishops' Council to make payments under section 67 of the Ecclesiastical Commissioners Act 1840 for "additional provision…for the cure of souls in parishes where such assistance is most required" does not extend to the Diocese.

5. By section 4 of the Diocese in Europe Measure 1980 power was conferred on the Commissioners to make payments to the Diocese for the stipend, expenses and housing of its bishop and any suffragan bishop. Neither the Commissioners nor the Archbishops' Council has any other power to make payments to the Diocese in Europe.

6. Until 2001, the Diocese made payments to the Archbishops' Council as a contribution to national Church of England costs. Since that date the payments have been waived to recognise that the Diocese does not receive any mission development funding (a funding stream which commenced in 2002). If the Diocese receives payments in future under this Measure, the question of its contributions to the Archbishops' Council will need to be reconsidered.

7. Subsequently, the Diocese requested that differences in eligibility for support from the Commissioners' funds between the Diocese and all other dioceses be reviewed. Initially the request was for support for the costs of

archdeacons, but in the course of discussions on the subject this was widened to a more general power for the Commissioners and the Archbishops' Council to make payments to the Diocese. Before bringing a proposal to General Synod, consultation took place with the Inter Diocesan Finance Forum the membership of which includes the Chair and Secretary of all Diocesan Boards of Finance, who supported the grant of wider powers to make payments to the Diocese. This proposal became section 1 of the Measure.

8. No decision has as yet been taken about the actual level of future funding for the Diocese.

9. Article 8 of the Constitution of the General Synod (set out in Schedule 2 to the Synodical Government Measure 1969) provides that certain Measures, Canons and schemes may not be finally approved by the General Synod unless they have been approved by a majority of the dioceses at meetings of their diocesan synods.

10. When the Diocese was established it did not have a diocesan synod. Therefore, the General Synod's Article 8 procedure provided for the decision of the Diocese to be made by the bishop's council and standing committee of the Diocese rather than (as is the case for the other dioceses) its diocesan synod. Now that the Diocese's diocesan synod is well established, the Diocese has requested that the Article 8 procedure in relation to the Diocese be amended to bring it into line with that for the other dioceses. The Diocese is satisfied that it can cope with the practical implications of such a change, including the possibility of increased costs and the need to schedule diocesan synod meetings to enable the timetable for any Article 8 business to be met. The Measure therefore provides for the diocesan synod rather than the bishop's council to be the consenting body for the purposes of Article 8 references. Section 2 of the Measure deals with this.

11. The Committee is invited to find the Measure expedient.

PROCEEDINGS IN THE GENERAL SYNOD

12. The Measure was introduced into the Synod for First Consideration in February 2012. It was received positively by the Synod and committed to a Revision Committee. No proposals for amendment were received by the Revision Committee. No amendments were made at the Revision Stage, and no Final Drafting stage was considered necessary. The Revision Stage and Final Approval stage were taken together at the July 2012 group of sessions of the Synod, when the Measure received the approval of all three Houses.

13. The voting on the Measure at the end of the Final Approval stage was as follows—

	Ayes	Noes
Bishops	22	0
Clergy	86	1
Laity	105	1

14. No abstentions were recorded in the House of Bishops, one in the House of Clergy and one in the House of Laity.

THE PROVISIONS OF THE MEASURE

Section 1 – Power for Church Commissioners and Archbishops' Council to make financial provision for Diocese in Europe

Section 1(1)

15. Section 1(1) inserts a new section lA (Further provision as to qualifying connections) into the 2008 Measure. The new section lA contains four new subsections.

Section 1(2)

16. This subsection modifies the effect of sections 2(3) and 8 of the National Institutions Measure 1998 ("the 1998 Measure"), providing that the Commissioners' power to make payments to the Diocese is to be treated as if it were a purpose for which the balance in the Commissioners' general fund was available immediately before the coming into force of those sections.

17. Section 2(3) of the 1998 Measure requires the Archbishops' Council to consider how to apply or distribute sums paid to them by the Commissioners under the 1998 Measure, but then restricts such applications or distributions by reference to the purposes for which the Commissioners' general fund was available immediately before the coming into force of section 2. The Measure therefore has the effect of enabling the Archbishops' Council, as well as the Commissioners, to make payments to the Diocese for the development of its mission. It means that the Archbishops' Council is required to "have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840 relating to the making of additional provision for the cure of souls in parishes where such assistance is most required". That provision does not extend to the Diocese (because, as previously noted, it has chaplaincies rather than parishes), and therefore in practice payments to the Diocese are likely to take slightly lower priority than payments under section 67.

18. Section 8 of the 1998 Measure requires the Commissioners to manage their assets for the advancement of any purpose for which they held them immediately before the coming into force of section 8, and to have particular regard to the requirements of section 67 of the Ecclesiastical Commissioners Act 1840. The effect of section 1(2) of the Measure on section 8 is to ensure that, in exercising their new power to make payments to the Diocese, the Commissioners are under the same obligation to have particular regard to the requirements of section 67 as they are in relation to payments for any of their other purposes.

Section 2 – Article 8 references in the Diocese in Europe

Section 2(1)

19. Section 2(1) confirms, for the avoidance of doubt, that the Diocese is a "diocese" for the purposes of interpretation of Article 8 of the Constitution of the General Synod, which provides for certain Measures, Canons and schemes to be referred to diocesan synods for approval before they can be finally approved by the General Synod.

Section 2(2)

20. Section 2(2) repeals the provision of Article 8 of the Constitution that required references under that article to be made to the bishop's council and standing committee of the Diocese. In future the function of giving or withholding approval on behalf of the Diocese for the purpose of Article 8 of the General Synod's Constitution will be given to the diocesan synod of the Diocese in the same way as in every other diocese.

21. Section 2(2) also consequentially repeals section 3 of the Diocese in Europe Measure 1980, which made provision about the application of Article 8 where a reference was made to the bishop's council and standing committee and is therefore no longer required.

Section 3 – Short title and commencement

22. Section 3 makes provision for the short title and commencement of the Measure.

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

23. No proposals for amendment were received by the Revision Committee. The Revision Committee therefore did not meet, and did not submit a report to the General Synod.

24. Only one person spoke against section 1 of the Measure in General Synod, at both First Consideration and Final Approval, on the grounds that it was not compatible with the purposes for which the Church Commissioners' funds had been given to the Commissioners to use income from them for the church overseas. The point was made in response that the Commissioners' funds come from a number of sources, including the episcopal estates, not all of which are subject to the restrictions which applied to Queen Anne's Bounty.

On behalf of the Legislative Committee

P.N.E. Bruinvels

Canon Peter N. E. Bruinvels

Deputy Chairman

October 2012

LEGISLATIVE COMMITTEE OF THE GENERAL SYNOD: COMMENTS AND EXPLANATIONS ON THE CLERGY DISCIPLINE (AMENDMENT) MEASURE

INTRODUCTION

1. The Legislative Committee of the General Synod, to which the Measure entitled the Clergy Discipline (Amendment) 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').

3. The amendments fall into four areas:

   - it will be 'misconduct' for the purposes of the 2003 Measure for a cleric to be a member of or to promote, or express or solicit support for, a party or organisation which is declared to be incompatible with the teachings of the Church of England in relation to race equality;
   - following a determination in a bishop's disciplinary tribunal (which hears complaints against priests and deacons) or a Vicar-General's Court (which hears complaints against bishops and archbishops), a party wishing to appeal will no longer have an automatic right to appeal, but will require leave to appeal;
   - a bishop will have increased power to remove a cleric from office following criminal conviction, or inclusion in a barred list established under the Safeguarding Vulnerable Groups Act 2006;
   - the 2003 Measure will be amended in a number of essentially technical respects.

   With the exception of the first amendment (which gives effect to a policy decision of the General Synod) all the amendments are intended to make modest improvements to a disciplinary system that is generally recognised as working well.

4. This paper is in four parts. In paragraphs 6 to 19 it explains the background which led up to the introduction of the draft Measure into the General Synod. Next, in paragraphs 20 to 85 it describes the provisions of the Measure. In the third part, paragraphs 86 to 123, it summarises the proceedings in the General Synod as the draft Measure was considered, revised and finally approved. Lastly, in the annexes there is some supplementary material.

5. The Legislative Committee invites the Ecclesiastical Committee, after 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.

6. The Legislative Committee of the General Synod, to which the Measure entitled the Diocese in Europe Measure has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

7. The Diocese in Europe Measure confers a new power on the Church Commissioners for England and Archbishops' Council to make payments to the Diocese in Europe, modifies the application of the National Institutions Measure 1998 and amends the Constitution of the General Synod set out in Schedule 2 to the Synodical Government Measure 1969. It also makes a consequential repeal of section 3 of the Diocese in Europe Measure 1980.

BACKGROUND TO THE MEASURE

8. The 2003 Measure has been fully in force since 1st January 2006. It provides procedures which enable bishops to deal with the vast majority of formal complaints about clergy misconduct (other than complaints relating to doctrine, ritual or ceremonial, which come within the provisions of the Ecclesiastical Jurisdiction Measure 1963). For the small proportion of cases that cannot be resolved by bishops the 2003 Measure has established a modern tribunal system which is compliant with human rights legislation. A summary of the procedures under the 2003 Measure can be found in Annex 1 to this paper.

The Clergy Discipline Commission

9. The body responsible for overseeing the operation of the 2003 Measure is the Clergy Discipline Commission ('the Commission'), which is constituted under section 3 of the 2003 Measure. The Commission has not more than twelve members, to include at least two members from each House of the General Synod. The Chair is the Right Honourable Sir John Mummery (Lord Justice Mummery). The Commission has a duty to formulate guidance for the purposes of the 2003 Measure generally, and with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a code of practice; a code, or any amendments to a code, cannot come into force until approved by the General Synod. The Commission published its first code of practice in January 2006.

10. In October 2008, as part of its continual overseeing of the operation of the 2003 Measure, the Commission published a consultation paper setting out its views on certain issues, including some on which concerns had been raised. Having considered and analysed responses to the consultation the Commission issued a paper in June 2009, and this was circulated to all members of the General Synod and to those who had been included in the consultation.

11. In July 2009 the General Synod passed a motion which welcomed the Commission's paper, and invited the Archbishops' Council to seek a report from the Commission on whether there was a case for bringing forward draft legislation to amend the 2003 Measure or the Code of Practice made under it.

Private Member's Motion with regard to race equality

12. At the February 2009 group of sessions of the General Synod the following private member's motion had been debated and carried:

> *'That this Synod, noting that in 2004 the Association of Chief Police Officers adopted a policy whereby "no member of the Police Service, whether police officer or police staff, may be a member of an organisation whose constitution, aims, objectives or pronouncements contradict the general duty to promote race equality" and "this specifically includes the British National Party", request*

the House of Bishops to formulate and implement a comparable policy for the Church of England, to apply to clergy, ordinands, and such employed lay persons as have duties that require them to represent or speak on behalf of the Church.'

13. A working group, independent of the Commission, was set up under the chairmanship of the Bishop of Ripon and Leeds to take forward the development of the policy referred to in the Synod resolution. As part of its work, the working group recommended to the House of Bishops that the 2003 Measure be amended to provide that it would be conduct unbecoming for a cleric to be a member of, or to promote or solicit support for, a party or organisation whose constitution, polices, objectives or public statements were declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to race equality. The House of Bishops accepted that recommendation.

Safeguarding Vulnerable Groups Act 2006

14. The Safeguarding Vulnerable Groups Act 2006 introduced changes to the law on safeguarding. It set up a new body, the Independent Safeguarding Authority ('ISA'). ISA prevents unsuitable people from working with children and vulnerable adults in 'regulated activity' by entering them on one or both of two 'barred lists' (one in respect of working with children, the other with vulnerable adults). In keeping with the Church's safeguarding policies consideration needed to be given to amending the 2003 Measure so that barred clergy could be removed from office.

The Commission's proposals for amendments to the 2003 Measure

15. In light of the motion carried in the General Synod in July 2009 and the subsequent House of Bishops' endorsement of the working group's recommendations, plus the developments in the law relating to safeguarding, the Commission assessed what changes to the 2003 Measure and Code of Practice were needed. In June 2010 the Commission duly reported to the Archbishops' Council with its proposals for amendment.

16. In response to the Commission's recommendations, the Archbishops' Council agreed that draft legislation to amend the 2003 Measure and proposals to amend the Code of Practice should be brought forward early in the new quinquennium. The Measure was accordingly introduced into the General Synod at the February 2011 group of sessions.

PROCEEDINGS IN THE GENERAL SYNOD

17. At the February 2011 group of sessions the Measure was considered by the General Synod at First Consideration Stage. It was committed to a Revision Committee. The General Synod also gave its consent for the Code of Practice to be amended with immediate effect, the most significant changes being in response to concerns about the exercise of a bishop's pastoral functions.

18. The Revision Committee met in October 2011. The Chair was the Venerable Richard Atkinson, Archdeacon of Leicester, now Bishop of Bedford. The Measure was subject to detailed revision and significant amendments were made, particularly in relation to provision about membership or involvement in organisations that are incompatible with the Church's teaching on race equality.

19. At Revision Stage before the General Synod in February 2012 only one amendment was moved. It would have had the effect of removing altogether the provision relating to membership or involvement in incompatible organisations. The amendment received little support and lapsed when fewer than 40 members stood to indicate a desire that it be further debated.

20. At Final Drafting stage in July 2012, two special amendments (dealt with in paragraphs 123 to 126) were made, in addition to a number of drafting amendments. The Final Approval Stage immediately followed Final Drafting.

	Ayes	Noes
Bishops	22	0
Clergy	90	0
Laity	100	2

21. No abstentions were recorded in the House of Bishops or in the House of Clergy. There was one recorded abstention in the House of Laity.

THE PROVISIONS OF THE MEASURE

Section 1 - Misconduct

22. **Section 1(3)** inserts a new section 8(4) to (10) into the 2003 Measure. The new provisions will put in place a very limited exception to the important principle set out in section 8(3) of the 2003 Measure that no proceedings in respect of unbecoming conduct can be taken in respect of the lawful political opinions or activities of any bishop, priest or deacon.

23. Section 1(3) has its origins in the resolution of the General Synod carried in February 2009 on a private member's motion.[1]

24. At present, it is not misconduct for the purposes of the 2003 Measure for a member of the clergy to join or to be actively involved with a lawful political party whose aims or policies are inconsistent with the Church's teachings. Implementation of the General Synod resolution necessarily involves a change to that position.

25. The rationale behind the change is that the clergy of the Church of England are required by canon law (in the form of Canon C 26.2) *"at all times [to] be diligent to frame and fashion their lives according to the doctrine of Christ, and to make [themselves] wholesome examples and patterns to the flock of Christ"*. One aspect of that is that clergy are expected to act in accordance with the Church's teaching on racial equality. There are some political parties or organisations whose aims or policies are so repugnant to the Church's teaching on racial equality that the Church would be brought into disrepute if its clergy were actively associated with them, and the ministry of those clergy severely compromised: the public would have no confidence in bishops, priests or deacons who were members of, or actively supported, such organisations.

New section 8(4) in the 2003 Measure:

26. Under the new section 8(4) it will be unbecoming or inappropriate conduct for clergy to be members of, or to promote, or express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to the equality of persons or groups of different races ('an incompatible organisation'). It will be for the House of Bishops to make any such declaration since it is bishops who are the guardians of the teachings and doctrine of the Church. In that capacity the House has already set out the teaching of the Church of England on race equality, in a theological statement entitled *Affirming our Common Humanity*.

27. The effect of the new provision will not be to prevent a cleric from merely expressing support for a particular *policy or policies* of an incompatible organisation (for example, its economic or transport policy), but it will prevent a cleric from taking the further step of *joining* that party or *speaking in support of it generally*, or encouraging others to join or support it generally. Support for an incompatible organisation, whether expressed privately or publicly, would be unbecoming or inappropriate conduct for clergy under the

[1] See paragraph 12 above.

new provision. This is because under Canon C 26.2 a cleric's duty to fashion his life according to the doctrine of Christ covers both his professional and private life.

28. The working party chaired by the Bishop of Ripon and Leeds charged with taking forward the implementation of the policy of the General Synod as reflected in its resolution of February 2009, and the General Synod subsequently, have been conscious of the need to ensure that the provisions of the Measure are not incompatible with the rights of Church of England clergy under Article 9 (freedom of thought, conscience and religion)[2], Article 10 (freedom of expression)[3] and Article 11 (freedom of assembly and association)[4] of the European Convention on Human Rights ('the Convention').

29. However, in doing so they have also borne in mind that the Church itself has rights under the Convention, in particular under Article 9 in relation to the manifestation of its beliefs and teachings – which embrace its right to ensure that its own clergy adhere to those teachings.

30. The provisions of the new section 8(4) are not considered to involve any incompatibility with the Convention rights of clergy so as to be problematic from the point of view of the Human Rights Act 1998. That would only be the case if, first, that provision interfered with one or more of the Convention rights referred to above and, secondly, any such interference could not be justified under the relevant Article. But neither of those propositions is true of the provision made by the new section 8(4).

31. As to the first issue, that of whether there would be any interference with a Convention right: *"What constitutes interference depends on all the circumstances of the case, including the extent to which in the circumstances an individual can reasonably expect to be at liberty to manifest his or her beliefs in practice".*[5] *In particular "The Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief in practice or observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practise or observe his or her religion without undue hardship or inconvenience".*[6]

32. Thus for example, *X v Denmark*[7] (which is concerned with a cleric's rights under Article 9, but by analogy, would apply equally to rights under Articles 10 and 11), provides support for the view that Convention rights would not be engaged if the Church prevented its own clergy from joining or actively promoting racist organisations. In that case the European Commission on

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2 Article 9: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance."

3 Article 10: "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers…"

4 Article 11: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

5 *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100 *per* Lord Bingham of Cornhill at paragraph 22.

6 Ibid at paragraph 23.

7 (1976) 5 DR 157

Human Rights set out the position in relation to the freedom of religion of clergy as follows:

"A church is an organised religious community based on identical or at least substantially similar views. Through the rights granted to its members under Art. 9 the Church itself is protected in its right to manifest its religion, to organise and carry out worship, teaching practice and observance, and it is free to act out and enforce uniformity in these matters. Further, in a State church system its servants are employed for the purpose of applying and teaching a specific religion. Their individual freedom of thought, conscience or religion is exercised at the moment they accept or refuse employment as clergymen, and their right to leave the Church guarantees their freedom of religion in case they oppose its teachings. In other words, the Church is not obliged to provide religious freedom to its servants and members, as is the State as such for everyone within its jurisdiction."[8]

33. Thus, since clergy who are members of, or otherwise active supporters of, an incompatible organisation have voluntarily sought ordination in the Church of England, and are able at any time to maintain that membership or support if they renounce active ordained ministry within the Church, it would seem that Church of England clergy cannot claim that their rights under any of Articles 9, 10 or 11 of the Convention would be interfered with by the new section 8(4).

34. Even if the new section 8(4) did involve an interference with the Convention rights of clergy under Articles 9, 10 and 11, a second strand of Strasbourg jurisprudence shows that any such interference could be justified. The rights granted under Articles 9, 10 and 11 are qualified rather than absolute. Interference with those rights is permitted if three conditions are satisfied, namely that: (i) the interference is prescribed by law; (ii) it is for a legitimate aim permitted by the Article in question; and (iii) it is necessary in a democratic society. Obviously, the new section 8(4) to be inserted by the Measure satisfies the first condition: it will be clear which parties or other organisations are incompatible bodies.

35. The second condition, that there must be a legitimate aim, is also satisfied, because the Church is seeking to protect its own rights under Article 9 by enforcing the requirement of its canon law that its clergy be wholesome examples and patterns to the flock of Christ by, in this case, observing its own teaching on racial equality: to do so will enable it to ensure that the ministry of its clergy, and thus its own capacity to pursue its mission, is not compromised as a result of their involvement with incompatible organisations.

36. Support for this point can be found in *ASLEF v UK*[9] (which is concerned with trade union membership under Article 11), where the European Court of Human Rights stated:

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8 Although this analysis has been questioned (see Copsey v WWB Devon Clays [2005] ICR 1789), as Lord Bingham of Cornhill stated in the Denbigh High School case "Even if it be accepted that the Strasbourg institutions have erred on the side of strictness in rejecting complaints of interference, there remains a coherent and remarkably consistent body of authority which our domestic courts must take into account and which shows that interference is not easily established".

9 [2007] IRLR 361

- whether the objective justifying the interference is sufficiently important to justify limiting the right in question;
- whether the measures designed to meet the objective are rationally connected to it;
- whether the means used to impair the Convention right are no more than is necessary to accomplish that objective; and
- whether interference strikes a fair balance between the rights of the individual and the interests of the community which requires carefully assessing the severity and consequences of the interference.[10]

37. Assessed against these criteria, any interference with the Convention rights involved in the new section 8(4) would be justified. In so far as the first of these criteria is concerned, it is relevant that in *Jersild v Denmark*[11] the European Court of Human Rights affirmed that insulting racist comments did not enjoy the protection of Article 10, and commented:

> *"The Court would emphasise … that it is particularly conscious of the vital importance of combating racial discrimination in all its forms and manifestations."*

38. As regards the others, to allow disciplinary proceedings to be taken against a cleric of the Church of England who is a full member of, or otherwise overtly supports, an incompatible organisation is a rational and proportionate means of ensuring that the ministry of its clergy is not called into question because of their involvement with that body.

39. Support for this analysis can be found in the decision of the European Commission on Human Rights in *Van der Heijden v The Netherlands*[12] (where an employee was dismissed because he was an active member of a political party that was hostile to immigrant workers and whose objectives were opposed to those of the employer, which was a foundation concerned with the welfare of immigrants). In that case the Commission justified the relevant part of its decision as follows:

> *"The Commission notes that the applicant's contract was terminated because his political activities, as reported in the media, were incompatible with the aims of the Foundation. In the circumstances of the present case, the Commission regards it as reasonable that the employer should have some discretion concerning the composition of his staff. Moreover, in view of the applicant's professional duties and specific nature of his work, the Commission considers that the employer could reasonably take account of the adverse effects which his political activities might have on the Foundation's reputation, particularly in the eyes of the immigrants whose interests it sought to promote. For these reasons, the Commission considers that the restriction or sanction complained of was a measure necessary in a democratic society to protect the rights of others."*

40. The rationale in *Van der Heijden v The Netherlands* therefore supports the proposition that, if a cleric has rights under Articles 9, 10 and 11 of the Convention, those rights should not override the right of the church to regulate its own clergy so that they adhere to its teachings on racial equality.

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[10] *Huang v Secretary of State for the Home Department* [2007] 2 AC 167 at paragraph 19.

[11] (1994) 19 EHRR 1

[12] (1985) 41 DR 264

New section 8(5) to 8(9) in the 2003 Measure:

41. These provisions will regulate the exercise of the new power to declare an organisation's constitution etc incompatible with the Church's teaching on racial equality.

42. A declaration of incompatibility with the Church's teaching on race equality will require a two-thirds majority in the House of Bishops.[13] Having made the declaration it would be the duty of the House to take appropriate steps to publish it.[14] The declaration would not, however, come into force with immediate effect, but would be laid before the General Synod to give its members the opportunity to call for a debate. If twenty five members called, in accordance with Standing Orders of the General Synod, for the declaration to be debated, it could not come into force unless it was approved by the Synod.[15] If a debate were not required, the declaration would come into force on the expiry of the time permitted by Standing Orders for giving notice calling for a debate.[16] This process would ensure that a declaration would have the support of the elected members of General Synod before it could become effective.

43. A declaration of incompatibility could be revoked by a resolution of the House of Bishops, subject to there being an opportunity for debate in the General Synod – as in the case of the making of declarations. A revocation, however, unlike a declaration, would not require a two-thirds majority in the House of Bishops.[17] If an organisation were to change its position on racial equality so that it became compatible with the Church's teachings, the House would therefore be able to revoke the relevant declaration by a simple majority.

44. **Section 1(4)** provides that the new provisions in section 1 of the Measure will not have effect in relation to any misconduct that occurs before section 1 comes into force.

Section 2 – Penalty by consent

45. In cases where misconduct is admitted by the respondent but the respondent and the bishop cannot agree as to the appropriate penalty, a complaint currently has to be referred to the Designated Officer for a formal investigation in accordance with section 17 of the 2003 Measure, and thereafter referred to the President of Tribunals so that the matter can be put before a tribunal for consideration of the appropriate penalty.

46. **Section 2** will enable a bishop and respondent to agree upon a penalty by consent even after the complaint has been referred to the Designated Officer,[18] including where it has been further referred to a tribunal. This provision will be of advantage in cases where respondents initially have unreasonable expectations about the penalty that should be imposed but on further reflection realise that the bishop's assessment of the appropriate

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[13] New section 8(9).

[14] New section 8(5).

[15] New section 8(6).

[16] New section 8(7).

[17] New section 8(8).

[18] See paragraphs 5(e) and 6 of Annex 1 for the role of the Designated Officer (and sections 17(1), 17(2) and 18(1) of the 2003 Measure).

penalty is realistic. This will avoid the need to convene a tribunal, and allow the case to be dealt with at diocesan level by the bishop.

Section 3 – Right of appeal

47. A respondent cleric under the 2003 Measure has an absolute right to appeal on questions of law or fact, and in respect of any penalty imposed. The appeal is made to the Arches Court of Canterbury or the Chancery Court of York, as appropriate, and is heard by five members of the court.[19]

48. A penalty imposed by a bishop's disciplinary tribunal cannot be implemented until an appeal is determined. Consequently, at present, an appeal with no merits can be pursued by a respondent simply to delay the imposition of the penalty and (in cases of removal from office) the point at which stipend ceases to be payable.

49. The consultation undertaken by the Clergy Discipline Commission in 2008-9 revealed strong support for the proposal that section 20 of the 2003 Measure be amended to require both the respondent and the Designated Officer to obtain leave to appeal before an appeal can be made (the Designated Officer presents the case against a cleric, and can only appeal on questions of law). **Section 3(3)** of the Measure gives effect to that proposal.

50. Under the provisions introduced by section 3(3) an application for leave to appeal would be made in writing explaining the grounds for appealing, and the application for leave could be disposed of with or without a hearing, in the court's discretion. The application for leave to appeal would be considered by two people, one of whom would be the Dean of the Arches and Auditor, and the other a lay member of the relevant provincial panel in the case of an application by the cleric, or an ordained member of the provincial panel in the case of an application by the Designated Officer. If either member of the court considered there was a real prospect of success, then permission would be granted. Additionally, at first instance the tribunal or the Vicar-General's Court would be able to give leave to appeal. This process will enable unmeritorious appeals to be disposed of efficiently and speedily, and where leave is granted, the real issues in an appeal could be identified at an early stage by the tribunal or court enabling the appellate court to deal with the case more effectively.

51. **Section 3(4)** will make changes in relation to the judges of the appellate court to bring the practice of appointing appellate judges in to line with the appointment of members of a bishop's disciplinary tribunal at first instance, including by giving the cleric an opportunity to make representations to the President as to the suitability of any person the President proposes to appoint. Under the current un-amended provisions of the 2003 Measure the judges of the two appellate courts are permanent appointments.

52. Section 3(4) will also make technical changes to the composition of the appellate court in relation to appeals by bishops and archbishops from the Vicar-General's court. There will be a requirement for one of the two judges

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[19] The Dean of the Arches and Auditor sits with two members of the clergy and two communicant lay members appointed from the relevant provincial panel. There are two panels, one for each province. Each diocesan bishop may nominate two lay persons and two clergy to the relevant provincial panel. The archbishop may nominate five lay persons and five clergy to the relevant panel and ten persons with appropriate legal qualifications. Members of a bishop's disciplinary tribunal and the Vicar-General's court are also appointed from the relevant panel by the President of Tribunals.

in Holy Orders to be in episcopal orders, but the episcopal judge will be able to be appointed from outside the provincial panel. This will ensure episcopal representation amongst the judges for appeals involving bishops and archbishops. Where the appeal is made by an archbishop the judges appointed by the President (other than the judge in episcopal orders) are to be appointed from the provincial panel of the other province, so that they are not appointed from the panel of the archbishop's own province.

53. **Section 3(5)** provides that the changes to the appellate process do not have effect in relation to any complaint made before the date when these provisions come into force.

Section 4 – Convictions and matrimonial orders etc: priests and deacons

54. **Section 4(2)** extends the bishop's power to impose a penalty under section 30 of the 2003 Measure without further proceedings following conviction for a criminal offence.

55. Presently under section 30 of the 2003 Measure, a bishop can impose a penalty following a criminal conviction only where the court has passed a sentence of imprisonment (whether or not suspended). This has attracted strong criticism in relation to individual cases where, under present sentencing guidelines in the criminal courts, cases of serious criminal misconduct (such as downloading and possessing obscene material in relation to children) have resulted in non-custodial sentences. A bishop will now be able to impose a penalty, where appropriate, under section 30 of the 2003 Measure following conviction for serious offences even if a prison sentence has not been imposed. Under **section 4(8)** these changes will not apply to convictions that pre-date the coming into force of this part of the Measure.

56. Section 4(2) sets the threshold in non-custodial cases for the purposes of section 30 of the 2003 Measure as an offence other than a summary offence – i.e. a criminal offence that is not triable solely in the Magistrates Court. As with the present power, which is restricted to custodial cases, the bishop will have a discretion in all the circumstances of the case as to whether to impose a penalty following a serious criminal conviction, and before he does so he will be required to consult the President of Tribunals, and to invite the priest or deacon to make representations. If a penalty is imposed by the bishop, the priest or deacon concerned will have the right to ask the relevant Archbishop to review the bishop's decision.

57. Section 4(2) will also enable the bishop to use his powers under section 30 of the 2003 Measure to remove from office a priest or deacon who has been included in a barred list under the Safeguarding Vulnerable Groups Act 2006. As with other cases under section 30 the bishop will be obliged to consult the President of Tribunals first, and give the respondent cleric an opportunity to make representations.

58. **Section 4(3)** defines what is meant by a "barred list".

59. **Section 4(4) and 4(5)** will amend section 30 of the 2003 Measure to enable the bishop to apply to the President of Tribunals for an extension in the two year period within which he must act under section 30 when imposing a penalty following a criminal conviction or a divorce court's decree absolute for adultery, unreasonable behaviour or desertion. A priest or deacon is

under a duty to notify the bishop of a conviction or decree absolute, but if he or she fails to notify the bishop, then at present the two year period could expire without the bishop learning of the conviction or decree absolute. Under the new provisions introduced by section 4 the President would be able to extend the two year period, but only after having first consulted the priest or deacon, and only if satisfied that the bishop did not know of the conviction or decree absolute.

60. **Section 4(6)** includes a consequential technical amendment arising out of section 4(2), and also makes an amendment to the definition of the "relevant diocese" in section 30(7) of the 2003 Measure to clarify which diocesan bishop has jurisdiction to impose a penalty following a matrimonial breakdown.

61. **Section 4(7)** makes a minor consequential change to the heading to section 30 of the 2003 Measure.

Section 5 – Convictions and matrimonial orders etc: bishops and archbishops

62. **Section 5** applies in respect of bishops and archbishops provisions that correspond to section 4 with regard to convictions, decrees absolute and debarment.

Section 6 – Suspension of priest or deacon

63. **Section 6(2)** will amend section 36 of the 2003 Measure and enable the bishop to suspend a priest or deacon after conviction for an offence other than for a summary offence. This will allow the bishop time to consider whether to impose a penalty, and, if appropriate, to implement it under section 30(1)(a) of the 2003 Measure. At present under section 36 of the 2003 Measure, a suspension must come to an end when criminal court proceedings are concluded – this could unfortunately result in clergy being restored to ministry temporarily whilst the procedures for removal from office under section 30 of the 2003 Measure are followed, even if it is not in the public interest to restore them.

64. Section 6(2) will also enable the bishop to suspend a priest or deacon who is entered on a barred list whilst the procedures for removal from office are followed under section 30 of the 2003 Measure.

65. **Section 6(3)** is consequential upon the amendments made in section 6(2).

66. **Section 6(4)** enables any suspension imposed under these new provisions to be renewed beyond the initial three months if the steps required for removal from office under section 30 of the 2003 Measure have not meanwhile been completed.

67. **Section 6(5)** makes a minor amendment to the heading to section 36 of the 2003 Measure.

Section 7 – Suspension of bishop or archbishop

68. **Section 7** relates to suspensions and applies in respect of bishops and archbishops provisions that correspond to section 6.

Section 8 – Archbishops' list

69. This section concerns the Archbishops' list, which is maintained under section 38 of the 2003 Measure and includes details of, inter alia, clergy upon whom a penalty has been imposed under the 2003 Measure. Bishops refer to the Archbishops' list when making appointments or granting permissions to officiate in their diocese. **Section 8(2)** will provide for a new category in the Archbishops' list, namely clergy whose names are included in a barred list under the Safeguarding Vulnerable Groups Act 2006.

70. **Section 8(3), 8(4) and 8(5)** make a number of technical amendments to section 38 of the 2003 Measure to clarify that the Archbishops act jointly when compiling and maintaining the list.

Section 9 – Amendments and repeals

71. **Section 9(1)** makes provision for the minor amendments set out in the Schedule to the Measure.

72. **Section 9(2) to 9(7)** make amendments to the Ecclesiastical Jurisdiction Measure that are consequential to the provisions in section 3 relating to appeals, and the composition of the appellate court.

73. **Section 9(8)** clarifies that the definition of "ecclesiastical judges" in section 10 of the Ecclesiastical Fees Measure 1986, as amended by section 44(4) of the 2003 Measure, includes those who chair a bishop's disciplinary tribunal. The Ecclesiastical Fees Measure provides a means for fixing the fees payable to ecclesiastical judges for the performance of the duties of their office.

Section 10 – Citation, commencement and extent

74. **Section 10** deals with citation of the Measure, commencement, and extension to the Channel Islands and the Isle of Man. It is in the usual form for Measures.

The Schedule

75. **Paragraphs 2 and 3** will enable the President and Deputy President of Tribunals to delegate their functions. The President's role is set out in section 4 of the 2003 Measure. He can issue practice directions, act as chairman of a tribunal if important points of law or principle are involved, and exercise the other functions conferred on him elsewhere in the Measure.[20] He also exercises certain functions prescribed in the Clergy Discipline Rules, such as deciding whether to cure or waive irregularities in procedure (rule 103), or to substitute a complainant (rule 56).

76. Under section 4(3) of the 2003 Measure the Deputy President may act for the President of Tribunals when the President is unable or unwilling to act, but there is no-one other than the Deputy President who can do so. Since there could be occasions when both the President and Deputy President are

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[20] Those other functions are: to grant extensions of time for complaints to be made – section 9; to review a bishop's decision to dismiss a complaint – section 11(4); to review a bishop's decision to take no further action – section 13(4); to decide whether there is a case for a respondent to answer – section 17; to direct that a complaint is to be withdrawn – section 18(2)(a); to direct that a complaint should be referred to conciliation – section 18(2)(b); to appoint tribunal members from the provincial panel – section 22; to be consulted by the bishop before a penalty is imposed under section 30; to determine appeals against suspension – section 36; to review entries on the Archbishops' list – section 38.

unable or unwilling to act – for instance if the respondent to a complaint were a friend of them both – provision needs to be made to cover such an eventuality. Hence paragraph 3 provides that the President or Deputy President may select, to act in his place when he is absent or unable or unwilling to act, any person who may be appointed as the chair of a disciplinary tribunal.

77. **Paragraph 4** amends section 21(4) of the 2003 Measure which relates to the composition of the provincial panels from whom members of a disciplinary tribunal are appointed by the President. Section 21(4) provides that no person who is not an actual communicant within the meaning of rule 54(1) of the Church Representation Rules shall be nominated to serve on the provincial panel. Rule 54(1) imposes a condition that a person must be on the electoral roll to qualify as an actual communicant, and under rule 1 only lay members are entitled to have their names entered on the roll. Consequently, section 21(4) of the 2003 Measure can only apply to lay members of the provincial panel (whether nominated to the panel under section 21(2)(a), (2)(c) or (3)(a)), and paragraph 4 of the Schedule will clarify this.

78. **Paragraph 5** amends section 23 of the 2003 Measure. This relates to the Vicar-General's court, which is the court for disciplinary hearings in respect of bishops and archbishops. **Paragraph 5(a)** is concerned with appointing a person to chair the court in place of the Vicar-General in proceedings against bishops. Under section 23(1)(a) of the 2003 Measure the Vicar-General can be recused only if he or she is personally acquainted with the complainant or respondent, in which case the President appoints a person to be chair of the court from those nominated to serve as chairs on the provincial panel of the province other than that in which the bishop serves. Paragraph 5(a) will enable the Vicar-General to stand down in wider circumstances than at present, and will enable a chair to be appointed from either provincial panel, there being no logical reason for restricting it to the other provincial panel (as chairs are nominated to a provincial panel by the relevant archbishop, so bishops play no part in their nomination). **Paragraph 5(c)** amends section 23(2)(a) in relation to proceedings against archbishops, and will similarly enable the Vicar-General to stand down in wider circumstances than at present. The chair presiding in place of the Vicar-General will continue to be appointed from the provincial panel of the other province, because it would be inappropriate for a chair to take part in proceedings against the archbishop who appointed him or her.

79. **Paragraphs 5(b) and 5(d)** bring into line the appointment of clerical members with the appointment of lay members to the Vicar-General's Court. At present there is no requirement for clerical members of the court to be appointed from either provincial panel, but paragraph 5(b) will require clerical members (other than those in episcopal orders) to be appointed from the provincial panel of the province other than that in which the bishop serves. This will not apply to the episcopal member of the court, because, otherwise, the pool of possible appointees might be too small to ensure a fair hearing. Paragraph 5(d), which is in respect of hearings against an archbishop, provides for clerical members of the court who are not in episcopal orders to be appointed from the provincial panel of the other province.

80. **Paragraph 6** amends section 34 of the 2003 Measure. A priest or deacon is required by section 34 of the 2003 Measure to inform the diocesan bishop if a decree nisi has been made absolute or an order of judicial separation made in respect of his or her marriage (and similarly, a bishop is required to inform his archbishop, and an archbishop is required to inform the other archbishop in the event of such court orders in respect of their marriages). Section 34 does not however require the cleric to tell the bishop what the bishop needs to know for the purposes of section 30(1)(b), which is whether he or she was respondent to the petition, and whether it was presented on the grounds of adultery, desertion or unreasonable behaviour. Paragraph 6 will correct this omission in section 34.

81. **Paragraph 7** imposes a duty on a cleric who has been placed on a barred list under the Safeguarding Vulnerable Groups Act 2006 to inform the bishop (or archbishop, or other archbishop, as the case may be) that he or she has been included in the list and the reasons for inclusion. Being included on a barred list may then lead to steps being taken under section 30 of the 2003 Measure (as amended by section 4(2)(c) and 4(3) and section 5(2)(c) and 5(3) of the Measure).

82. Under section 36(1)(b) of the 2003 Measure a bishop may suspend a priest or deacon holding preferment on being arrested for suspicion of committing a criminal offence. Paragraph 8 clarifies that this provision applies whether the arrest took place in England or elsewhere.

83. **Paragraph 9** makes a similar clarification in relation to the arrest of bishops and archbishops by amending the corresponding provision in section 37(1)(b) of the 2003 Measure.

84. **Paragraph 10** amends the procedure for revising a code of practice published by the Clergy Discipline Commission under section 39 of the 2003 Measure. It gives the Commission an opportunity to consider a draft code of practice further in the light of any amendments that might be made by the General Synod, but the present position is maintained that the final form of a code of practice cannot be issued without the approval of the General Synod. If the Commission were therefore to make further amendments to a draft code after the General Synod had amended it, paragraph 10 provides that the code as re-amended by the Commission could not be issued until it had been referred back to the General Synod for further approval.

85. **Paragraph 11** amends the interpretation section of the 2003 Measure to include the meaning of "barred list" under the Safeguarding Vulnerable Groups Act 2006.

86. **Paragraph 12** makes two minor technical amendments to section 44 of the 2003 Measure. The first repeals section 44(1), which became redundant when section 95 of the Pluralities Act 1838 was repealed by the Ecclesiastical Offices (Terms of Service) Measure 2009. The second amendment corrects a reference in section 44(4) with regard to section 20 of the Ecclesiastical Fees Measure 1986.

87. **Paragraph 13** corrects an omission in section 45(2)(a) of the 2003 Measure where a reference to "Measure 1990" in section 26(2)(a) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 should read "Measures 1990 and 1994". The amendment is required because section 26(2)(a) of the 1991 Measure has been amended to refer to the "Care of Cathedrals Measures 1990 and 1994".

MATTERS RAISED BEFORE THE REVISION COMMITTEE AND THE GENERAL SYNOD

A. Revision Committee Stage

Section 1: Misconduct

Organisations that are incompatible with the Church's teaching on race equality – s.1(3)

88. An archdeacon proposed that section 1(3) should be removed from the draft Measure. He questioned the need for it on the basis that clergy membership of undesirable organisations was not a practical problem for the Church, and suggested that if section 1(3) were retained the House of Bishops could come under considerable pressure from campaigning groups seeking to have certain organisations declared to be incompatible. He also feared that publicity would be generated for, and welcomed by, any such organisations, and argued that that was not a constructive means of combating racist behaviour.

89. A lay member also questioned whether the provision in section 1(3) was needed. He argued that in February 2009 the General Synod had sent a strong signal that racism would not be tolerated in the Church, because it was inconsistent with Christian discipleship. He went on to suggest that if criminal proceedings were successfully brought against a cleric under the Racial and Religious Hatred Act 2006, disciplinary procedures could be triggered under the existing provisions of the 2003 Measure.

90. The Steering Committee opposed the proposal that section 1(3) be removed from the Measure, on the basis that the General Synod had made a policy decision in February 2009 when it approved the private member's motion requiring provision of this kind to be made, and the Steering Committee believed it should seek to implement that policy. The Revision Committee agreed with the Steering Committee.

91. A member of the House of Clergy proposed that the provision enabling the House of Bishops to make declarations about particular organisations should be omitted, and that instead the House should be required to issue guidelines on racial equality to help clergy know what they could or could not do. The Revision Committee was advised that such an amendment would not be compatible with Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) of the Convention because it would remove the element of certainty, and would substitute merely guidelines. A cleric would not therefore know if it were misconduct to promote, support or belong to a particular organisation until a disciplinary tribunal had ruled as to whether or not the organisation complied with the guidelines. In the light of this advice, the member withdrew his proposed amendment.

92. At First Consideration Stage section 1(3) of the Measure provided no mechanism for a declaration by the House of Bishops to be referred to the General Synod for debate and approval. It provided for any declaration by the House to be passed by a simple majority. A lay member, whilst agreeing that it was appropriate that the House of Bishops should initially decide under section 1(3) which groups or organisations were incompatible with the Church's teaching on racial equality, submitted that any such decision

should require a two-thirds majority in the House, because it would be creating an exception to the general principle in section 8(3) of the 2003 Measure that no proceedings for unbecoming conduct could be taken in respect of lawful political opinions or activities. He proposed a further safeguard that any decision by the House of Bishops to proscribe a body should be ratified by the other two Houses of the General Synod, but ratification could be deemed to be given unless within 28 days of the declaration by the House of Bishops 10 members of either of the other two Houses of the General Synod called for a debate. The lay member proposed that all clergy in active ministry should be notified by their respective dioceses when the House of Bishops made a declaration under section 1(3).

93. A member of the House of Clergy supported the proposal that a declaration of the House of Bishops under section 1(3) should be subject to an approval process involving the General Synod. He too submitted that approval should be deemed unless Synod members wished to debate the proposed declaration. He further submitted that clergy should be given a period of grace following a declaration within which to sever their links with any proscribed organisation, otherwise they could be unwittingly guilty of misconduct.

94. The Steering Committee was sympathetic to the proposal that the General Synod should be involved in approving the declarations of incompatibility made by the House of Bishops, and it was mindful that section 1(3) would affect rights granted under Articles 10 and 11 of the Convention. The Steering Committee was therefore in favour of the General Synod having a role to play in approving declarations of incompatibility under section 1(3), and noted that any approval process would necessarily result in a period during which individual clergy could take action to distance themselves from any incompatible organisation.

95. The Revision Committee accepted the proposal that a declaration by the House of Bishops under section 1(3) should require a two-thirds majority.

96. The Revision Committee also agreed with the Steering Committee that a declaration by the House of Bishops under section 1(3) should be subject to an approval process involving the General Synod before it could come into force. The Revision Committee further agreed that any approval process would apply not only when a declaration of incompatibility was made but also when any such declaration was revoked by the House of Bishops.

97. The Revision Committee accepted the submissions that Synodical approval could be deemed to be given unless a debate was called for by a given number of the members of Synod. It agreed that the number of Synod members required to call for a debate should be 25, and that requests for a debate should be made in writing to the Clerk to the Synod in accordance with the requirements of Standing Orders.

98. The Revision Committee considered whether Synodical approval following debate should be by the whole Synod or by the Houses of Clergy and Laity meeting separately. A debate in the whole Synod would enable members of the House of Bishops to take part and explain the House's rationale for the declaration. The Revision Committee therefore agreed that it would be more appropriate for the whole Synod to debate an approval motion, so that any contentious declarations would consequently be endorsed by Synod as a whole.

99. The Revision Committee rejected the submission that all clergy in active ministry should be notified of a declaration by the House of Bishops under section 1(3). The Revision Committee believed that a declaration would receive considerable publicity, especially once the item appeared in the agenda for a group of sessions. Furthermore, General Synod business was published on the Church of England website and this particular business would, no doubt, receive attention from the national press.

100. The Revision Committee also rejected the proposal that clergy should be given a period of grace to sever their links with an organisation once it had been declared to be incompatible with the Church's teaching on racial equality. There would be sufficient time during the declaration and approval process for clergy to consider their position and to withdraw from such organisations. Furthermore, once a declaration under section 1(3) of the Measure came into effect a member of the clergy who was involved with a proscribed organisation would not automatically be disciplined – a complaint would have to be made first.

Section 3: Right of appeal

Obtaining leave to appeal

101. A member of the House of Clergy proposed that section 3(3), which introduces a requirement to obtain leave to appeal, be withdrawn. He submitted that there should always be a right to appeal, and that a right of appeal was consistent with the recommendations of *"Under Authority"* (GS 1217)[21].

102. The Steering Committee opposed the proposal that section 3(3) be deleted. It argued that section 3(3) did not remove the right of appeal, because every clergy respondent would still be entitled to apply for leave to appeal, and if either the Dean of the Arches and Auditor or the other judge hearing the application believed there was a real *prospect* of success (which was a relatively low threshold to satisfy) then the appeal would go ahead. If an appeal had no realistic prospect of success then the Steering Committee believed it would be inappropriate for it to be pursued to a final hearing. Whilst an unmeritorious appeal remained unresolved any parish concerned could be adversely affected by the consequent delay and uncertainty.

103. The Revision Committee noted that in the consultation carried out by the Clergy Discipline Commission in 2008-09 there was widespread support for the proposal that leave to appeal should be required for all appeals. It considered that prolonging cases whilst unmeritorious appeals were pursued could be unfair on others affected by the complaint, and it was important to ensure justice was provided for all, not just the respondent. The Revision Committee noted that in secular court proceedings leave to appeal was usually required before an appeal could be pursued. The Revision Committee therefore rejected the proposal for the removal of section 3(3).

104. The member of the House of Clergy further submitted that any application for leave to appeal should be determined on paper by each of the five judges of the appellate court (namely the Court of Arches or the Chancery Court of

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[21] *"Under Authority"* was a report published in 1996 by a working party of the Synod that reviewed clergy discipline, and called for fresh legislation. This led to the enactment of the Clergy Discipline Measure 2003.

York, as the case may be) and that leave to appeal should be granted if a majority of the judges were in favour. He argued in the alternative that if two judges sitting together were to determine an application for leave to appeal, then the second judge sitting with the Dean of Arches and Auditor should always be a clerk in Holy Orders, since the ministry and livelihood of a member of the clergy would be at stake.

105. The Steering Committee opposed each of these proposals. It considered that a member of the clergy wishing to appeal would be more likely to secure leave to appeal from one of two judges than from three out of five, and it considered that a five-judge court would not be able to function satisfactorily if each judge considered the application alone. The Steering Committee also believed that it was appropriate to hear the voice of the laity in an application by a respondent cleric for leave to appeal. The Revision Committee agreed with the Steering Committee and rejected the proposed amendments.

106. A lay member proposed that section 3(3) should be amended to provide specifically as to what the decision of the court would be on an application for leave to appeal where the two judges disagreed. He argued that a new sub-section was required in section 3(3) to provide that: (a) where one judge held that leave should be given without limit but the other judge considered that only permission limited to certain issues was appropriate, the appeal should proceed without limitation; (b) where one judge held that leave should be given limited to certain issues but the other judge refused to grant leave to appeal, the appeal would proceed on the issues as limited by the first judge; and (c) where both judges wished to limit the issues in the appeal but did not agree as to which issues they should be, the appeal would proceed in respect of each issue identified by either judge.

107. The Revision Committee was advised that the amendment was otiose, and that section 3(3) already achieved what the lay member was seeking. Under the new section 20(1C), to be inserted by section 3(3), the court *could* direct that the issues to be heard on the appeal be limited in such way as the court may specify. Since the approval of only one judge was required for leave to appeal any decision made by the court (whether giving unlimited or limited leave to appeal) would necessarily be that which was most favourable to the appellant. The Revision Committee was advised that the draft legislation should be kept as uncomplicated as possible. The Revision Committee accepted that advice and rejected the proposed amendment.

Appointment of judges to hear an appeal and transitional matters

108. A member of the House of Clergy proposed that the number of judges in the Court of Arches or Chancery Court of York (as the case may be) to hear a substantive appeal should be reduced from five to three, unless the appeal involved new evidence. He submitted that a five-judge court was cumbersome. The Steering Committee opposed this proposal.

109. The Revision Committee noted that the Clergy Discipline Commission had concluded following its consultation in 2008-9 that it was not appropriate or desirable for a three-judge court to be able to overturn a decision of a tribunal consisting of five members. It would be particularly undesirable if the court were split two judges to one but the tribunal had been unanimous the other way. The Revision Committee rejected the proposed amendment.

110. A lay member proposed that the transitional provision applying section 3(3) to appeals brought before section 3(3) came into force should be amended to

apply to *complaints* made before section 3(3) came into force. He submitted that it would otherwise be unfair because the new provisions would remove an unfettered procedural right to appeal for any cleric in respect of whom a complaint had already been made. The Steering Committee supported this proposal, and the Revision Committee accepted it.

Amendments to section 3 proposed by the Steering Committee

111. The Steering Committee had noted observations made by the Dean of the Arches and Auditor at First Consideration Stage of the Measure in relation to section 3. The Dean had spoken in favour of section 3 but wished to see it amended in three respects. First, he suggested that leave to appeal should be capable of being granted not just by the appellate court but also by the bishop's disciplinary tribunal at first instance. This would then accord with the usual practice in secular civil courts. Secondly, the Dean had suggested that the new section 20(5) to be inserted by section 3(4), enabling a cleric to make representations as to the suitability of a person to be appointed to the appellate court to hear an appeal, should be extended to cover the second judge sitting with the Dean to consider an application for leave to appeal. Thirdly, the Dean recommended that the second person appointed to sit with the Dean should not be a permanent appointment but, like the judges of the full court, be appointed for the purposes of a particular application.

112. The Steering Committee considered that there was logic and consistency in all three points raised by the Dean and therefore proposed amendments to the Measure to reflect them.

113. The Revision Committee agreed with the Steering Committee and accepted each of the Steering Committee's proposed amendments to section 3.

Section 4: Convictions and matrimonial orders, etc: priests and deacons

Barred lists under the Safeguarding Vulnerable Groups Act 2006

114. Without making any specific proposal to amend the proposed power in section 4(2)(c) for a bishop to remove a barred cleric from office, a lay member drew the Revision Committee's attention to his concern about the provision. He was concerned that a member of the clergy who had not been convicted of a criminal offence could nonetheless be put on a barred list under the provisions of the Safeguarding Vulnerable Groups Act 2006, and thereafter be subject to discipline.

115. The Revision Committee was advised that, under the procedures of the Safeguarding Vulnerable Groups Act, before any decision is taken by the Independent Safeguarding Authority to place a person on a barred list, that person has the right to make representations, and if included in a barred list, is entitled to appeal to a statutory tribunal on the grounds that the Independent Safeguarding Authority made a mistake on any point of law or any finding of fact upon which it had relied. The Revision Committee was also advised that if a cleric were placed on a barred list by the Independent Safeguarding Authority, the bishop would have a discretion whether to exercise any disciplinary powers in all the circumstances of the case having consulted the President of Tribunals and given the priest an opportunity to make representations. Furthermore, a cleric would have the right to request the archbishop to review the bishop's decision. The Revision Committee

was satisfied that there were therefore sufficient safeguards for a cleric and it decided not to make any amendments to section 4(2)(c).

Matrimonial orders and section 30(1)(b) of the 2003 Measure

116. Submissions were made from two members (one lay, one clergy) that the bishop's power to impose a penalty under section 30(1)(b) of the 2003 Measure upon termination of a marriage on the grounds of a cleric's adultery, desertion or unreasonable behaviour, should be abolished. It was submitted that, in practice, allegations in a petition for divorce were often not contested so that a swift divorce with minimum expense and acrimony could be granted – especially where the petition was presented on the grounds of unreasonable behaviour – and that it was unfair on clergy if they were then subsequently liable to a disciplinary penalty based on the unreasonable behaviour relied upon in the divorce proceedings.

117. One of the members submitted, as an alternative, that if section 30(1)(b) in the 2003 Measure were retained, there should be an obligation on a bishop not just to consult the President on penalty but to follow the view of the President of Tribunals unless there was a good reason not to do so. The proposal was made on the basis that this would lead to greater consistency among bishops.

118. The Steering Committee disagreed with the submissions that section 30(1)(b) of the 2003 Measure should be repealed. It was satisfied that paragraph 171 of the Code of Practice gave sound advice and realistic guidance to a bishop who was considering exercising his powers of discipline following a marital breakdown, especially following a petition based on unreasonable behaviour.[22] The Revision Committee agreed with the Steering Committee, and rejected the proposal to remove section 30(1)(b) altogether. The Revision Committee also rejected the submission that bishops should be required to follow the view of the President of Tribunals as to penalty when acting under section 30(1)(b) of the 2003 Measure. The Revision Committee bore in mind the fundamental principle in section 1 of the 2003 Measure that it was the bishop who was responsible for administering discipline, and it was satisfied that consistency was achieved under the present procedure whereby the President was consulted by a bishop. Additionally, any decision by the bishop to impose a penalty under section 30(1)(b) could be reviewed by the archbishop on the application of the cleric concerned.

Section 5: Convictions and matrimonial orders, etc.: bishops and archbishops

119. The Revision Committee considered similar submissions with regard to section 5 as were made in respect of section 4, and came to the same conclusions.

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[22] Paragraph 171 of the Code of Practice reads: *"Removal from office or prohibition will not automatically result from a decree absolute of divorce or decree of judicial separation involving adultery, unreasonable behaviour or desertion. Most decrees absolute and decrees of judicial separation are granted as a result of uncontested proceedings on paper so that the evidence in support of the petition is not questioned or tested, although it is accepted by the court. Furthermore, some respondents, recognising that their marriage has broken down irretrievably and could be dissolved against their will in any event after a period of 5 years separation, may choose not to contest allegations in a divorce petition, even if not accepted – this avoids legal expense and argument over sensitive and personal issues. The bishop should bear this in mind as a factor when considering what disciplinary action to take."*

Section 6: Suspension of priest or deacon

120. A lay member proposed that the new power of suspension in section 6(2) should be widened to include any conviction where a sentence of imprisonment was passed, since the Measure at First Consideration Stage did not enable a bishop to suspend where a prison sentence was imposed on a member of the clergy following conviction for a summary offence. The Revision Committee accepted the proposal.

121. The Steering Committee proposed that section 6(4) be amended so that the bishop would have power to renew a suspension that was imposed following a criminal conviction, or where the cleric had been entered on a barred list under the Safeguarding Vulnerable Groups Act. Although the original suspension could last for up to three months it was foreseeable that there could be cases where the bishop was not able to take action under section 30(1) of the 2003 Measure within that time frame – for example where the respondent cleric was ill for a time so the process was delayed. The Revision Committee noted the safeguard that the cleric would have the right to appeal to the President of Tribunals against the renewal of any suspension and accepted the Steering Committee's proposed amendment.

B. Final Drafting Stage

122. At Final Drafting Stage, in addition to a number of technical drafting amendments which did not change the substance of the Measure, two special amendments were moved on behalf of the Steering Committee.

123. The first special amendment related to section 1(3) of the Measure and the proposed new section 8(8) to be added to the 2003 Measure. The Revision Committee had amended the Measure by requiring a two-thirds majority in the House of Bishops for a declaration of incompatibility with the Church's teachings on racial equality, and had given the General Synod an opportunity to debate and endorse the House's proposed declaration. The Revision Committee had concluded that a similar process should apply when a declaration was revoked.

124. The Steering Committee proposed that the requirement for a two-thirds majority in the House of Bishops to revoke a declaration should be removed, whilst leaving in place the provision enabling the General Synod to debate any such proposed revocation. In proposing this amendment the Steering Committee was mindful of the general principle in section 8(3) of the 2003 Measure that no proceedings may be taken in respect of lawful political opinions or activities. Whilst there was a case for a two-thirds majority to make a declaration of incompatibility, the Steering Committee considered that it would be inappropriate for restrictions imposed on clergy under the new section 8(4) of the 2003 Measure to continue to have force if a simple majority in the House of Bishops was no longer in favour of the restrictions. The amendment was carried.

125. The other special amendment was concerned with section 4(2) and the proposed new section 30(1)(a) of the 2003 Measure. As drafted, section 4(2) would have amended section 30(1)(a) of the 2003 Measure by enabling a bishop to impose a penalty upon conviction in the United Kingdom for an offence other than a summary offence where the cleric concerned did not receive a prison sentence, and upon conviction for an equivalent offence outside the United Kingdom. The special amendment on behalf of the

Steering Committee restricted the new provision in section 30(1)(a) of the 2003 Measure so that the bishop could impose discipline upon a cleric if convicted of such an offence only if it was committed in England or Wales. There were two reasons for proposing the amendment: first, it would otherwise have been problematic to determine which offences committed outside the United Kingdom were equivalent offences for these purposes; and second, because the concept of summary offence is not the same throughout the United Kingdom, clerics could have been treated differently for similar offences depending on where in the United Kingdom the offence was committed. This amendment was also carried.

On behalf of the Legislative Committee

P.N.E. Bruinvels

Canon Peter N. E. Bruinvels

Deputy Chairman

October 2012

Appendix 1: A Summary of the procedures under the Clergy Discipline Measure 2003

1. All admitted to Holy Orders of the Church of England are covered by the 2003 Measure, whether deacon, priest, bishop, or archbishop, and whether or not in active ministry. Where the formal complaint concerns priests or deacons, the disciplinary structure is centred on the bishop, because in each diocese it is the bishop who is responsible for administering discipline.

2. There are four grounds under the 2003 Measure for alleging misconduct against a member of the clergy ("the respondent"), namely: acting in breach of ecclesiastical law, failing to do something which should have been done under ecclesiastical law, neglecting to perform or being inefficient in performing the duties of office, and engaging in conduct that is unbecoming or inappropriate to the office and work of a clerk in Holy Orders.

3. The disciplinary process is started by a formal written complaint, which is made to the bishop (or to the archbishop in case of a complaint about a bishop). The complaint must be made within one year of the alleged misconduct in question, or within one year of the last occasion of misconduct where there is a series of acts or omissions amounting to misconduct. This period of one year can be extended by the President of Tribunals (an office which is held by the Chair of the Clergy Discipline Commission).

4. The person making the complaint ("the complainant") must produce written evidence in support of the complaint. The complaint with the evidence in support is referred in the first instance to the diocesan registrar for preliminary scrutiny. The registrar checks to see if the complainant has the right to complain, and whether the allegations would amount to misconduct if proved; the registrar makes a report on these matters to the bishop and copies of the report are given to the complainant and respondent. On receipt of the registrar's report, if the bishop decides that the complainant is not entitled to complain, or if the issues raised do not justify further serious consideration, the bishop may dismiss the complaint.

5. If the complaint is not dismissed at this stage, the bishop invites the respondent to put in a written Answer to the complaint, and upon receipt of that decides which course to take. There are five courses available to the bishop under the 2003 Measure:

   (a) He can decide to take no further action;

   (b) With the respondent's consent, the bishop can leave the complaint on the record for up to 5 years (known as a 'conditional deferment'); if during that time another complaint of misconduct is made against the respondent then this first matter may be dealt with at the same time and in the same way as the later complaint;

   (c) With the agreement of the complainant and the respondent, the bishop can appoint a conciliator to attempt to bring about a conciliation;

   (d) Where a respondent admits misconduct the bishop may impose an appropriate penalty with the respondent's consent; and

   (e) Where there is no admission of misconduct, or no agreement over the appropriate penalty, or an attempt at conciliation fails, the bishop may refer the complaint for a formal investigation. A report is prepared by

the legally qualified Designated Officer and is submitted to the President of Tribunals who decides if there is a case to answer.

6. If, following the formal investigation, the President decides that there is no case to answer, no further steps are taken under the 2003 Measure. If, on the other hand, he decides there is a case to answer, the President refers the complaint to the bishop's disciplinary tribunal, before which the case for the complainant is conducted by the Designated Officer. A tribunal consists of five people (two laity, two clergy, and a legally qualified chair) who are selected by the President from the relevant provincial panel, the members of which are nominated by the diocesan bishops and archbishop of that province.

7. Complaints against bishops are subject to similar procedures. The main differences are that the complaints are made to the relevant archbishop, the preliminary scrutiny is conducted by the provincial registrar, and the Vicar-General's court hears any case to be answered.

8. Various penalties can be imposed for misconduct. These can be imposed by the bishop with the consent of the respondent, or by the bishop's disciplinary tribunal. The penalties range from a life-long prohibition from exercising any functions, to a rebuke. A tribunal may also make a conditional discharge order for a period of up to two years, which means that no penalty is imposed provided the respondent commits no further misconduct during that period.

9. If a penalty is imposed under the 2003 Measure, either by the bishop or by the bishop's disciplinary tribunal, it is recorded in the 'Archbishops' list' which is compiled and maintained jointly by the archbishops.

10. The 2003 Measure also provides a separate procedure under section 30(1)(a) whereby a member of the clergy, who commits a criminal offence and receives a sentence of imprisonment, may be liable to a penalty of removal from office or to prohibition from exercising any functions of his or her Orders. A similar procedure under section 30(1)(b) is available if a respondent has had a decree of divorce or an order of judicial separation made against him or her and has committed adultery, behaved unreasonably or deserted the former spouse.

Appendix 2: The Clergy Discipline Measure 2003 as it would be amended by the Measure (changes underlined)

CLERGY DISCIPLINE MEASURE

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Clergy Discipline Measure 2003

2003 No. 3

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

Introductory

1 Duty to have regard to bishop's role

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

2 Disciplinary tribunals

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

3 Clergy Discipline Commission

(1) There shall be a body (to be called the Clergy Discipline Commission) consisting of not more than twelve persons appointed by the Appointments Committee of the Church of England including at least –

(a) two persons from each House of the General Synod;

(b) two persons who have either a seven years general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge.

(2) The Appointments Committee shall, after consultation with the Dean of the Arches and Auditor, appoint a member of the Commission to be the chairman of the Commission and also a member to be the deputy chairman, being members who have the qualifications referred to in subsection (1)(b) above.

(3) The Commission shall exercise the functions conferred on it by this Measure and in addition shall have the following duties –

(a) to give general advice to disciplinary tribunals, the courts of the Vicars-General, bishops and archbishops as to the penalties which are appropriate in particular circumstances;

(b) to issue codes of practice and general policy guidance to persons exercising functions in connection with clergy discipline;
(c) to make annually to the General Synod through the House of Bishops thereof a report on the exercise of its functions during the previous year.

4 President of tribunals

(1) The chairman and deputy chairman of the Commission shall be the president of tribunals and the deputy president respectively for the purposes of this Measure.

(2) The president of tribunals shall exercise the functions conferred on him by this Measure and in addition shall have the following duties –
(a) to issue practice directions;
(b) to act as the chairman of a disciplinary tribunal where, in his opinion, important points of law or principle are involved;
(c) to exercise such other functions as may be prescribed.

(3) Subject to subsection (4) below, the deputy president of tribunals shall act for the president when the president is absent or is unable or unwilling to act.

(4) The president or deputy president of tribunals may select any person who may be appointed as the chairman of a disciplinary tribunal under section 22(1) below to act in his place when he is absent or unable or unwilling to act.

5 Registrar of tribunals

(1) The archbishops of Canterbury and York shall each for his province, after consultation with the president of tribunals, appoint a person to be the registrar of tribunals for the province for the purposes of this Measure.

(2) A person so appointed shall be a person who has a general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41).

(3) The person holding the office of registrar of tribunals for a province shall vacate that office on the date on which he attains the age of seventy years or such earlier age as may be prescribed by regulations made by the House of Bishops of the General Synod under section 5 of the Ecclesiastical Judges and Legal Officers Measure 1976 (1976 No. 2).

(4) The registrar of tribunals for a province may resign his office by instrument in writing under his hand addressed to, and served on, the archbishop of the province and the instrument shall specify the date, being a date not less than twelve months after the service of the instrument or such earlier date as the archbishop may allow, on which the resignation is to take effect.

(5) The appointment of a person as registrar of tribunals for a province may be terminated by an instrument in writing under the hand of the archbishop of the province (after consultation with the president of tribunals) addressed to, and served on, that person, and the instrument shall specify the date, being a date not less than twelve months after the date of service of the instrument, on which the appointment is to terminate.

(6) The registrar of tribunals for a province shall exercise the functions conferred on him by this Measure and in addition shall have the following duties –

(a) to direct and supervise the general administration of disciplinary tribunals in the province;

(b) to exercise such other functions as may be prescribed.

(7) If the person holding the office of registrar of tribunals for a province is for any reason unable or unwilling to perform the duties of a registrar or it would be inappropriate for him to perform those duties, the registrar of tribunals for the other province shall perform those duties and, for that purpose, shall have all the powers and duties of the registrar of the first-mentioned province.

6 Jurisdiction in disciplinary proceedings

(1) A disciplinary tribunal constituted for a diocese has jurisdiction to hear and determine disciplinary proceedings under this Measure against a priest or deacon –

(a) who, when the misconduct complained of was alleged to have been committed, held preferment in the diocese or, subject to subsection (3) below, was resident therein; or

(b) who is alleged to have officiated as a minister in the diocese without authority.

(2) The Vicar-General's court of each of the provinces of Canterbury and York constituted in accordance with the provisions of this Measure has jurisdiction to hear and determine disciplinary proceedings under this Measure –

(a) against any bishop who, when the misconduct complained of was alleged to have been committed, held preferment in the province or, subject to subsection (3) below, was resident therein; or

(b) against any bishop who is alleged to have officiated as a minister in the province without authority; or

(c) against the archbishop of the other province.

(3) Where disciplinary proceedings in respect of any matter are instituted under section 10 below against –

(a) a priest or deacon in the diocese in which he holds or held preferment or in which he is alleged to have officiated as a minster without authority, or

(b) a bishop in the province in which he holds or held preferment or in which he is alleged to have officiated without authority,

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

(4) Where disciplinary proceedings in respect of any matter are instituted under section 10 below against –

(a) a priest or deacon in the diocese in which he is alleged to have officiated without authority, or

(b) a bishop in the province in which he is alleged to have officiated without authority,

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

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

Disciplinary proceedings concerning matters not involving doctrine, ritual or ceremonial

7 Application

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

(2) Proceedings in relation to matters involving doctrine, ritual or ceremonial shall continue to be conduced in accordance with the 1963 Measure.

8 Misconduct

(1) Disciplinary proceedings under this Measure may be instituted against any archbishop, bishop, priest or deacon alleging any of the following acts or omissions –

(a) doing any act in contravention of the laws ecclesiastical;

(b) failing to do any act required by the laws ecclesiastical;

(c) neglect or inefficiency in the performance of the duties of his office;

(d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.

(2) In the case of a minister licensed to serve in a diocese by the bishop thereof, the licence shall not be terminated by reason of that person's misconduct otherwise than by way of such proceedings.

(3) Subject to subsection (4) below, no proceedings in respect of unbecoming or inappropriate conduct shall be taken in respect of the lawful political opinions or activities of any archbishop, bishop, priest or deacon.

(4) Notwithstanding subsection (3) above, it shall be unbecoming or inappropriate conduct for any archbishop, bishop, priest or deacon to be a member of, or to promote, or express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to the equality of persons or groups of different races.

(5) It shall be the duty of the House of Bishops to take appropriate steps to publish any declaration made under subsection (4) above.

(6) Without prejudice to subsection (5) above, the House of Bishops shall lay any declaration made under subsection (4) above before the General Synod and, if 25 or more members of the Synod give notice in accordance with its Standing Orders that they wish the declaration to be debated, it shall come into force on the date on which the declaration is approved by the General Synod.

(7) Any declaration made under subsection (4) above which is not debated by the General Synod in accordance with subsection (6) above shall come into force at the expiry of the period required by the Standing Orders for the giving of the notice under subsection (6).

(8) Any declaration made under subsection (4) above may be revoked by a resolution of the House of Bishops and subsections (5), (6) and (7) above shall apply to any such resolution as they apply to a declaration under subsection (4).

(9) Any declaration made by the House of Bishops under subsection (4) above shall require the assent of a majority of not less than two-thirds of the members of the House present and voting.

(10) In subsection (4) above "races" shall be construed in accordance with section 9 of the Equality Act 2010.

9 Limitation of time for institution of proceedings

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

Provided that, when the misconduct is one for which the person concerned has been convicted either on indictment or summarily, proceedings may be instituted within twelve months of the conviction becoming conclusive, notwithstanding that the aforesaid period of one year has elapsed:

And provided further that the president of tribunals may, if he considers that there was good reason why the complainant did not institute

proceedings at an earlier date, after consultation with the complainant and the respondent, give his written permission for the proceedings to be instituted after the expiry of the said period of one year.

10 Institution of proceedings

(1) Disciplinary proceedings under this Measure may be instituted against any person who is subject to the jurisdiction of a disciplinary tribunal or the Vicar-General's court by virtue of section 6 above, by way of complaint made in writing, only as follows –

(a) in the case of a priest or deacon, by –
  (i) a person nominated by the parochial church council of any parish which has a proper interest in making the complaint, if not less than two-thirds of the lay members of the council are present at a duly convened meeting of the council and not less than two-thirds of the lay members present and voting pass a resolution to the effect that the proceedings be instituted; or
  (ii) a churchwarden of any such parish; or
  (iii) any other person who has a proper interest in making the complaint;

(b) in the case of a bishop, by –
  (i) a person nominated by the bishop's council of the diocese concerned, if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
  (ii) any other person who has a proper interest in making the complaint;

(c) in the case of an archbishop by –
  (i) a person nominated by the archbishop's council of his diocese if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
  (ii) any other person who has a proper interest in making the complaint.

(2) A complaint under this section shall be laid –

(a) in the case of a priest or deacon, before the diocesan bishop concerned,
(b) in the case of a bishop, before the archbishop concerned,
(c) in the case of an archbishop, before the other archbishop,

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

(3) A complaint made under this section shall be accompanied by written particulars of the alleged misconduct, and written evidence in support of

the complaint shall be sent to the bishop or archbishop, as the case may be, either with the complaint or at such later time as he may allow.

11 Preliminary scrutiny of complaint

(1) When a complaint in writing has been made in accordance with section 10 above it shall be referred in the first instance to the registrar of the diocese or province concerned, as the case may be, who shall thereupon scrutinise the complaint in consultation with the complainant with a view to –

(a) forming a view as to whether or not the parochial church council or other person making the complaint has a proper interest in doing so or, if the complainant purports to be a churchwarden, establishing that he is such, and

(b) forming a view as to whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with the following provisions of this Measure,

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

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

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

(3) On receipt of the registrar's report the bishop may dismiss the complaint and, if he does so, he shall give written notice of the dismissal to the complainant and the respondent, together with a copy of the report.

(4) On receipt of a notice of dismissal the complainant may request the president of tribunals to review the dismissal, and the president may then uphold the dismissal or, if he considers the dismissal to be plainly wrong, reverse it and direct the bishop to deal with the complaint in accordance with section 12 below.

(5) Where the registrar proposes to extend the period of twenty-eight days referred to in subsection (2) above, he shall, before doing so, consult the complainant and the respondent.

(6) The registrar may delegate any or all of his functions under this section to such person as he may designate.

12 Courses available to bishop

(1) If the complaint is not dismissed under section 11(3) above the bishop shall, within the period of twenty-eight days following the receipt by him of the registrar's report under section 11(2) above or the president of tribunal's direction under section 11(4), as the case may be, or such longer period as he considers to be justified in the particular circumstances of the case, determine which of the following courses is to be pursued –

(a) he may take no further action, in which case the provisions of section 13 below apply; or

(b) he may, if the respondent consents, direct that the matter remain on the record conditionally, in which case the provisions of section 14 below apply; or

(c) he may direct that an attempt to bring about conciliation in accordance with section 15 below is to be made; or

(d) he may impose a penalty by consent in accordance with section 16 below; or

(e) he may direct that the complaint is to be formally investigated in accordance with section 17 below.

(2) Where the bishop proposes to extend the period of twenty-eight days referred to in subsection (1) above he shall, before doing so, consult the complainant and the respondent.

13 No further action

(1) Where the bishop determines that there is to be no further action the following provisions of this section shall apply.

(2) The bishop shall reduce his determination to writing and shall give a copy of it to the complainant and the respondent.

(3) The complainant may refer the complaint to the president of tribunals and, if the president considers that the bishop's determination was plainly wrong, he may direct the bishop to pursue such of the courses specified in section 12(1)(b) to (e) above as he considers appropriate, in which case the bishop shall proceed accordingly.

14 Conditional deferment

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

(2) The complaint and the bishop's determination shall be notified to the archbishop concerned and remain on a record maintained by the diocesan registrar concerned for such period not exceeding five years as the bishop may determine and, subject to subsection (3) below, no further action shall be taken.

(3) Notwithstanding the provisions of section 9 above, if another complaint is made under section 10 above against the respondent and that complaint is dealt with under paragraph (c), (d) or (e) of section 12(1) above, the

recorded complaint may be dealt with under any of those paragraphs together with the other complaint.

(4) The bishop shall reduce his determination to writing and give a copy of it to the complainant and the respondent. He shall also supply them with a statement explaining the effect of subsections (2) and (3) above.

15 Conciliation

(1) Where the bishop determines that an attempt to bring about conciliation is to be made he shall afford the complainant and the respondent an opportunity to make representations and, if both of them agree to the appointment of a conciliator, an appointment shall be made under subsection (2) below.

(2) The appointment of a conciliator shall be by the bishop with the agreement of the complainant and the respondent.

(3) The bishop shall not appoint any person to be a conciliator unless he is satisfied that there is no reason to question the impartiality of that person.

(4) A conciliator appointed under this section shall use his best endeavours to bring about a conciliation between the complainant and the respondent and –

(a) if, within the period of three months following his appointment or such further period as he may, with the agreement of the complainant and the respondent, allow a conciliation is brought about, he shall submit a report on the case to the bishop, together with such recommendations as he may wish to make;

(b) if a conciliation is not brought about but the complainant and the respondent agree that another conciliator should be appointed, the bishop may appoint that other person as the conciliator for the purposes of this section;

(c) if a conciliation is not brought about and the complainant and the respondent do not agree as aforesaid, he shall refer the matter back to the bishop.

(5) If –

(a) the complainant and the respondent do not agree to the appointment of a conciliator or as to the person to be appointed, or

(b) the matter is referred back to the bishop by the conciliator under subsection (4)(c) above,

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

16 Penalty by consent

(1) Where the bishop considers that the imposition of a penalty by consent might be appropriate, he shall afford the complainant and the respondent an opportunity to make representations and, if the respondent consents to

the imposition of a penalty under this section and he and the bishop agree as to the penalty, the bishop shall, subject to subsection (2) below, proceed accordingly and thereafter no further step shall be taken in regard thereto.

(2) Where it is agreed that prohibition for the life or resignation is the appropriate course the respondent or the bishop may, within the period of seven days following the date of the agreement, withdraw his agreement and the prohibition or resignation shall not be implemented in pursuance of this section.

(3) If the consent of the respondent to the imposition of a penalty under this section is not obtained or he and the bishop are unable to reach agreement as to the nature of the penalty, the bishop shall proceed to deal with the complaint under paragraph (e) of section 12(1) above.

(3A) At any time after the bishop has directed, under section 12(1)(e) above, that the complaint be formally investigated in accordance with section 17 below or after the president of tribunals has referred the complaint to a disciplinary tribunal, the bishop and the respondent may, if the respondent admits the misconduct which is the subject of the complaint, agree to the imposition of a penalty under this section and the bishop shall, subject to subsection (2) above, proceed accordingly and thereafter no further step shall be taken in regard thereto.

(4) The bishop shall notify the complainant of any action taken in pursuance of this section and shall also notify the archbishop of the province concerned and the registrar of the diocese concerned of any penalty agreed in pursuance of subsection (1) above.

17 Formal investigation

(1) Where the bishop directs that the complaint is to be formally investigated, he shall refer the matter to the designated officer and it shall then be the duty of that officer to cause inquiries to be made into the complaint.

(2) After due inquiries have been made into the complaint the designated officer shall refer the matter to the president of tribunals for the purpose of deciding whether there is a case to answer in respect of which a disciplinary tribunal or the Vicar-General's court, as the case may be, should be requested to adjudicate.

(3) If the president of tribunals decides that there is a case for the respondent to answer he shall declare that as his decision and refer the complaint to a disciplinary tribunal or the Vicar-General's court, as the case may be, for adjudication.

(4) If the president of tribunals decides that there is no case for the respondent to answer he shall declare his decision, and thereafter no further steps shall be taken in regard thereto.

(5) The president of tribunals shall reduce his decision to writing and shall give a copy of it to the complainant, the respondent, the bishop and the designated officer.

18 Conduct of proceedings

(1) In disciplinary proceedings under this Measure it shall be the duty of the designated officer or a person duly authorised by him to conduct the case for the complainant.

(2) In any such proceedings the president of tribunals may direct –
- (a) that the complaint is to be withdrawn, whereupon no further action shall be taken in the proceedings; or
- (b) that an attempt or further attempt to bring about conciliation is to be made, whereupon the provisions of section 15 above shall apply.

(3) In any such proceedings –
- (a) the standard of proof to be applied by the tribunal or court shall be the same as in proceedings in the High Court exercising civil jurisdiction;
- (b) the determination of any matter before the tribunal or court shall be according to the opinion of the majority of the members thereof and shall be pronounced in public together with its reasons therefor;
- (c) the hearing shall be in private, except that the tribunal or court, if satisfied that it is in the interests of justice so to do or the respondent so requests, shall direct that the hearing shall be in public in which case the tribunal or court may, during any part of the proceedings, exclude such person or persons as it may determine.

19 Imposition of penalty

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

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

to express in writing his views as to the appropriate penalty and the tribunal or court shall have regard to any such views in

imposing the penalty, if any and the views of the bishop or archbishop, as the case may be, shall be conveyed in writing to the respondent:

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

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

20 Right of appeal

(1) Subject to the following provisions of this section, in disciplinary proceedings under this Measure –

(a) the respondent may appeal against any penalty imposed on him, and

(b) the respondent on a question of law or fact, and the designated officer, on a question of law, may appeal against any finding of the disciplinary tribunal or the Vicar-General's court,

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

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

(1B) Any application for leave of the appeal court under subsection (1A) –

(a) shall be heard jointly by the Dean of the Arches and Auditor and one judge appointed by the president of tribunals for the purpose of those proceedings from among the persons serving on the provincial panel of the relevant province, who shall be a lay person in the case of an application by the respondent and a person in Holy Orders in the case of an application by the designated officer;

(b) may, if the Dean of the Arches and Auditor so directs, be determined without a hearing; and

(c) shall be granted if at least one of the judges considers either that the appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard.

(1C) If the disciplinary tribunal or the court grants the application for leave, it may direct that the issues to be heard on the appeal be limited in such way as the tribunal or the court may specify.

(2) Subject to subsection (3) below, proceedings on an appeal under subsection (1) above shall be heard and disposed of by the Dean of the Arches and Auditor sitting with two persons in Holy Orders and two lay persons appointed by the president of tribunals for the purpose of those proceedings from among the persons nominated to serve on the provincial

panel of the relevant province otherwise than by the bishop of the diocese concerned.

(3) In the case of an appeal from a decision of the Vicar-General's court –

(a) one of the persons in Holy Orders shall be in Episcopal Orders, whether or not that person has been nominated to serve on the provincial panel mentioned in subsection (2) above, and

(b) where the appeal is by an archbishop, subsection (2) shall have effect as if the reference to persons nominated to serve on the provincial panel otherwise than by the bishop of the diocese concerned were a reference to persons (other than the person in Episcopal Orders) nominated to serve on the provincial panel of the other province.

(4) Before the president of tribunals appoints a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) or on an application for leave to appeal under subsection (1A) above he shall satisfy himself that there is no reason to question the impartiality of that person.

(5) Before appointing a person to sit as a judge for the purpose of proceedings on an appeal under subsection (1) or on an application for leave to appeal under subsection (1A) above the president of tribunals shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

Composition of tribunal and Vicar-General's court

21 Provincial panels

(1) It shall be the duty of the Clergy Discipline Commission to compile and maintain for each province, in accordance with the provisions of subsection (2) below, a list (hereinafter referred to as "the provincial panel") of persons available for appointment under the following provisions of this Measure as members of a disciplinary tribunal or of the Vicar-General's court.

(2) Each provincial panel shall contain the names of –

(a) two lay persons from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who are resident in the diocese and are on the electoral roll of a parish in the diocese or on the community roll of a cathedral which is not a parish church;

(b) two persons in Holy Orders from each diocese nominated by the bishop of the diocese after consultation with the bishop's council, being persons who have served in Holy Orders for at least seven years and are resident in the diocese;

(c) ten persons nominated by the archbishop of the relevant province, being persons who have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge;

(d) such persons as may be nominated under subsection (3) below.

(3) The archbishop of the relevant province may also nominate for inclusion on the provincial panel –

(a) not more than five persons who are resident in the province and are on the electoral roll of a parish in the province or on the community roll of a cathedral which is not a parish church; and

(b) not more than five persons who have served in Holy Orders for at least seven years and reside in the province.

(4) No lay person who is not an actual communicant, within the meaning of rule 54(1) of the Church Representation Rules (1969 No. 2 Sch. 3), shall be nominated to serve on the provincial panel.

(5) Persons nominated to serve on the provincial panel shall so serve for a period of six years, and on retiring from the panel shall be eligible to be nominated to serve for not more than one further period of six years:

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

(6) Where the period of service of a person nominated to serve on the provincial panel expires while he is a member of a disciplinary tribunal or of the Vicar-General's court to which proceedings under this Measure are referred, he shall continue to be a member of the tribunal or court until the completion of the proceedings.

(7) Where a casual vacancy occurs on the provincial panel the Archbishop of the relevant province or the bishop of the relevant diocese, as the case may be, may nominate a person to fill the vacancy, and the provisions of subsection (2) and (4) above, relating to qualifications and consultations shall apply for the purposes of this subsection as they applied for the purposes of the nomination of the person whose place he takes on the panel.

(8) Any person nominated to fill a casual vacancy shall serve only for the unexpired term of service of the person whose place he takes on the panel.

22 Disciplinary tribunals

(1) A disciplinary tribunal shall consist of five members as follows –

(a) the chairman, who shall be the president of tribunals or such other person as he may appoint as chairman from those nominated under section 21(2)(c) above to serve on the relevant provincial panel;

(b) two lay persons appointed by the president of tribunals from those nominated under section 21(2)(a) or (3)(a) above otherwise than

by the bishop of the diocese concerned to serve on the relevant provincial panel; and

(c) two persons in Holy Orders appointed by the president of tribunals from those nominated under section 21(2)(b) or (3)(b) above otherwise than by the bishop of the diocese concerned to serve on the relevant provincial panel.

(2) The president of tribunals shall not appoint any person to be a member of a disciplinary tribunal unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed.

23 Vicar-General's court

(1) The Vicar-General's court, when exercising its jurisdiction in disciplinary proceedings under this Measure against a bishop, shall consist of five members as follows –

(a) the chairman, who shall be the Vicar-General of the relevant province unless he declares himself to be personally acquainted with the complainant or the respondent or he is otherwise unable to act, in which case the president of tribunals shall appoint a person to be the chairman from those nominated under section 21(2)(c) above to serve on the provincial panel of either province;

(b) two persons in Holy Orders appointed by the president of tribunals, of whom one shall be in Episcopal Orders and the other shall be appointed from among those nominated to serve on the provincial panel of the province other than that in which the bishops serves;

(c) two lay persons appointed by the president of tribunals from among those nominated under section 21(2)(a) or 3(a) above to serve on the provincial panel of the province other than that in which the bishop serves.

(2) The Vicar-General's court, when exercising its jurisdiction in disciplinary proceedings under this Measure against an archbishop of a province, shall consist of five members as follows –

(a) the chairman, who shall be the Vicar-General of the other province unless he declares himself to be personally acquainted with the complainant or the respondent or he is otherwise unable to act, in which case the president of tribunals shall appoint a person to be chairman from those nominated under section 21(2)(c) above to serve on the provincial panel of the other province;

(b) two persons in Holy Orders appointed by the president of tribunals, of whom one shall be in Episcopal Orders and the other shall be appointed from among those nominated to serve on the provincial panel of the other province;

(c) two lay persons appointed by the president of tribunals from among those nominated under section 21(2)(a) or 3(a) above to serve on the provincial panel of the other province.

(3) The president of tribunals shall not appoint any person to be a member of the Vicar-General's court of a province unless he is satisfied that there is no reason to question the impartiality of that person, and before doing so he shall afford an opportunity to the respondent to make representations as to the suitability of that person to be appointed

Penalties

24 Types of penalty

(1) One or more of the following penalties may be imposed on a respondent upon a finding that he has committed any misconduct, namely –

(a) prohibition for life, that is to say prohibition without limit of time from exercising any of the functions of his Orders;
(b) limited prohibition, that is to say prohibition for a specific time from exercising any of the functions of his Orders;
(c) removal from office, that is to say, removal from any preferment which he then holds;
(d) in the case of a minister licensed to serve in a diocese by the bishop thereof, revocation of the licence;
(e) injunction, that is to say, an order to do or to refrain from doing a specified act;
(f) rebuke.

(2) No penalty of removal from office imposed on an archbishop or bishop or on any person holding any preferment the right to appoint to which is vested in Her Majesty (not being a parochial benefice) shall have effect unless and until Her Majesty by Order in Council confirms the penalty.

25 Conditional discharge

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

(2) Before making an order under subsection (1) above the tribunal or court shall explain to the respondent in ordinary language that if he commits further misconduct during the period specified in the order a penalty may be imposed for the original misconduct.

(3) Where, under subsection (4) below, a penalty is imposed on a person conditionally discharged under subsection (1) above for the misconduct in respect of which the order for conditional discharge was made, that order shall cease to have effect.

(4) If a person in whose case an order has been made under subsection (1) above is found, in disciplinary proceedings under this Measure, to have committed misconduct during the period specified in the order, the disciplinary tribunal or the Vicar-General's court, as the case may be, may deal with him for the misconduct for which the order was made in any manner in which it could deal with him if it had just found that he had committed that misconduct.

26 Removal of prohibition for life and deposition

(1) Where by virtue of anything done under this Measure or the 1963 Measure a priest or deacon is prohibited for life or deposed he may make an application to the archbishop concerned for the prohibition or deposition to be nullified on the grounds –

(a) that new evidence has come to light affecting the facts on which the prohibition or deposition was based; or

(b) that the proper legal procedure leading to the prohibition or deposition was not followed.

(2) If the archbishop, on an application made in accordance with subsection (1) above, considers that the prohibition or deposition was not justified he may, after consultation with the Dean of the Arches and Auditor, declare that the prohibition or deposition be nullified, whereupon it shall be treated for all purposes in law as never having been imposed.

(3) This section shall apply to archbishops and bishops who are prohibited for life or deposed as it applies to priests and deacons who are prohibited for life or deposed, with the following adaptations –

(a) in the case of an archbishop, the references to the archbishop concerned shall be read as references to the Dean of the Arches and Auditor and the reference to consultation with him shall be omitted;

(b) in the case of a bishop, the references to the archbishop concerned shall be read as references to the archbishop of the other province.

27 Removal of limited prohibition

Where by virtue of anything done under this Measure or the 1963 Measure an archbishop, bishop, priest or deacon is prohibited from exercising functions for a specific time he and the archbishop or bishop of the province or diocese concerned (or his successor in office) acting jointly may make an application to the Dean of the Arches and Auditor sitting with the two Vicars-General for the removal of the prohibition; and on receiving such an application they may make an order removing the prohibition, whereupon he shall be eligible for any preferment.

28 Restoration on pardon

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

29 Disobedience to penalty etc.

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

Proceedings in secular courts

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

(1) If a person who is a priest or deacon –

(a) is convicted, –

(i) whether in England or elsewhere, of any offence for which a sentence of imprisonment (including one which is not implemented immediately) is passed on him, or

(ii) of any offence, other than a summary offence, committed in England and Wales, or

(b) has a decree of divorce or an order of judicial separation made against him following a finding of adultery, behaviour in such a way that the petitioner cannot reasonably be expected to live with the respondent or desertion and, in the case of divorce, the decree has been made absolute, or

(c) is included in a barred list,

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

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

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

that person in writing of the decision. If the decision is to impose the penalty, that person may request the archbishop of the relevant province to review the decision and upon such a review the archbishop may uphold or reverse the decision after consideration of all the circumstances, including any representations made under this subsection.

(3) Subject to subsection (3A) below, a penalty shall not be imposed under subsection (1)(a) or (b) after the expiry of the period of two years beginning with the date on which the conviction becomes conclusive or, as the case may be, the decree absolute or order is made.

(3A) The president of tribunals may, on application by the bishop of the relevant diocese, extend the period of two years referred to in subsection (3) above if, after consultation with the priest or deacon concerned, he is satisfied that the bishop did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.

(4) Where a penalty is to be imposed under this section, it shall be imposed by the bishop of the relevant diocese, and before imposing it the bishop shall require the registrar of his diocese to give (if it is practicable to do so) not less than fourteen days notice in writing to the priest or deacon concerned of the time and place at which the penalty will be imposed and if the priest or deacon appears at that time and place he shall be entitled to be present when the penalty is imposed.

(5) When imposing a penalty under this section the bishop shall be attended by the registrar of this diocese. The penalty shall be reduced to writing and a copy thereof shall be sent to the archbishop of the province concerned and to the registrar of the diocese concerned.

(6) The functions exercisable under this section by an archbishop shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercised by the other archbishop.

(7) In this section "relevant diocese" means –

(a) the diocese in which the priest or deacon, in relation to whom a penalty may be imposed under this section, holds preferment at the date on which the conviction which justifies the imposition of the penalty becomes conclusive or, as the case may be, the date of the decree absolute of divorce or the date of the order of judicial separation; or

(b) if at that date he is not holding preferment, but is residing in a diocese, the diocese in which he is residing at that date; or

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

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

(1) If a person who is a bishop or archbishop –

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

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

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

(a) if he is a bishop, request the other archbishop, or
(b) if he is an archbishop, request the president of tribunals,

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

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

(3A) The president of tribunals may, on application by the archbishop, if the person liable to a penalty under this section is a bishop, or the other archbishop, if the person liable is an archbishop, extend the period of two years referred to in subsection (3) above if, after consultation with the bishop or archbishop concerned, he is satisfied that the archbishop or the other archbishop, as the case may be, did not know of the existence of the conviction or, as the case may be, of the decree absolute or order.

(4) Where a penalty is to be imposed under this section it shall be imposed –

(a) in the case of a person who is a bishop, by the archbishop of the relevant province after consultation with the two senior diocesan bishops of the province, and
(b) in the case of a person who is an archbishop, by the other archbishop after consultation as aforesaid.

(5) When imposing a penalty under this section the archbishop shall be attended by the registrar of his province. The penalty shall be reduced to writing and a copy thereof shall be recorded in the registry of the province concerned and sent to the archbishop concerned.

(6) The functions exercisable under this section by the archbishop of the relevant province shall, during the absence abroad or incapacity through illness of the archbishop or a vacancy in the see, be exercisable by the other archbishop.

(7) In this section "bishop" means any diocesan bishop, any suffragan bishop and any other bishop.

32 Consequences of penalties imposed under section 30 or 31

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

33 Duty to disclose criminal convictions and arrests

(1) A person in Holy Orders who (whether in England or elsewhere) is convicted of an offence or is arrested on suspicion of committing an offence shall be under a duty, within the period of twenty-eight days following the conviction or arrest, –

(a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,
(b) in the case of a bishop, to inform the archbishop concerned, and
(c) in the case of an archbishop, to inform the other archbishop,

of the conviction or arrest.

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

34 Duty to disclose <u>details of</u> divorce and separation orders

<u>(1) A person in Holy Orders in respect of whose marriage a decree nisi of divorce has been made absolute or an order of judicial separation has been made shall be under a duty, within the period of twenty-eight days following the decree or order, –</u>

<u>(a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,
(b) in the case of a bishop, to inform the archbishop concerned, and
(c) in the case of an archbishop, to inform the other archbishop,
(i) of the decree or order,
(ii) as to whether he was the respondent in the proceedings, and
(iii) if he was the respondent, of any finding of adultery, unreasonable behaviour or desertion against him and of the details or particulars of the conduct which led to any such finding.</u>

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

34A Duty to disclose inclusion in a barred list

(1) A person in Holy Orders who is included in a barred list shall be under a duty, within the period of twenty-eight days following his inclusion –
  (a) in the case of a priest or deacon, to inform the bishop of the diocese concerned,
  (b) in the case of a bishop, to inform the archbishop concerned, and
  (c) in the case of an archbishop, to inform the other archbishop,
    (i) of his inclusion in the barred list, and
    (ii) of the reasons for his inclusion.

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

Miscellaneous

35 Application of 1963 Measure's provisions

(1) The following provisions of the 1963 Measure shall apply for the purpose of this Measure as they apply for the purposes of that Measure, with the adaptations specified in subsection (2) below –
Section 58 (payment of costs)
Section 60 (powers re-costs)
Section 61 (recovery of costs)
Section 62 (payment of expenses)
Section 63 (fees payable)
Section 71 (performance of duties during suspension etc)
Section 72 (occupation of parsonage house)
Section 73 (suspension of penalty during appeal)
Section 74 (restrictions during suspension etc.)
Section 75 (provisions as to lapse on avoidance of preferment)
Section 76 (rights of patronage during suspension etc.)
Section 78 (recording of declarations etc.)
Section 80 (place of sitting)
Section 81 (evidence etc.)
Section 83(2) and (3) (savings).

(2) In the application of those provisions for the purposes of this Measure they shall be read with the following adaptations –
  (a) subject to the following provisions of this subsection, for any reference to the 1963 Measure there shall be substituted a reference to this Measure;
  (b) for any reference to an offence cognisable under section 14 of the 1963 Measure there shall be substituted a reference to misconduct;
  (c) any reference to a court shall be construed as including a reference to a disciplinary tribunal;

(d) for any reference to a declaration made or to be made in accordance with the provisions of the 1963 Measure there shall be substituted a reference to a penalty imposed under section 30 or 31 above;
(e) any reference to a person nominated to promote proceedings shall be construed as a reference to a person who may, by virtue of section 10 above or section 42 below, institute disciplinary proceedings under this Measure;
(f) for any reference to suspension or inhibition there shall be substituted a reference to prohibition;
(g) for any reference to a censure there shall be substituted a reference to a penalty.

36 Suspension of priest or deacon

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

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

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

(2) The bishop may at any time, by notice in writing served on the priest or deacon concerned, revoke a notice of suspension served under subsection (1) above.

(3) Where a notice of suspension is served under subsection (1)(a) or (b) above and it has not been revoked under subsection (2) the suspension shall continue until the expiry of the period of three months following service of the notice or until the proceedings under this Measure or for the criminal offence are concluded, whichever occurs earlier, but if the proceedings are not concluded before the expiry of that period a further notice of suspension under subsection (1)(a) or (b) above may be served, and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions.

(3A) Where a notice of suspension is served under subsection (1)(c) or (d) above and it has not been revoked under subsection (2), the suspension shall continue until the expiry of the period of three months following service of the notice or until a penalty is imposed on the priest or deacon

under section 30(1) above, whichever occurs earlier, save that a further notice of suspension under subsection 1(c) or (d) may be served pending conclusion of any step taken under section 30(2) or (4), and this subsection shall apply in relation to the further suspension as it applied to the earlier suspension or suspensions.

(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

(1) Where –

(a) a complaint in writing is made under section 10(1) above against a bishop or archbishop, or

(b) a bishop or archbishop is arrested (whether in England or elsewhere) on suspicion of committing a criminal offence, or

(c) a bishop or archbishop is convicted of any offence mentioned in section 30(1)(a) above, or

(d) a bishop or archbishop is included in a barred list,

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

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

(2) The archbishop may at any time, by notice in writing served on the bishop or archbishop concerned, revoke a notice of suspension served under subsection (1) above.

(3) Where a notice of suspension is served under subsection (1) above the archbishop may, after consultation with the two most senior diocesan bishops of his province, make such arrangements as he thinks fit for the

ministrations of the diocese or province concerned while the suspension remains in force.

(4) While a notice of suspension under subsection (1) above remains in force in relation to a bishop or archbishop he shall not interfere with any person performing functions in pursuance of arrangements made under subsection (3) above.

(5) In this section "bishop" means any diocesan bishop, any suffragan bishop or any other bishop.

(6) Subsections (3), (3A) and (6) of section 36 above shall apply for the purposes of this section as they apply for the purposes of that section, but as if for any reference to a priest or deacon there were substituted a reference to the bishop or, as the case may be, the archbishop and as if, in subsection (3A), the references to sections 30(1) and 30(2) were references, respectively, to sections 31(1) and 31(2).

38 Archbishops' list

(1) Subject to the following provisions of this section, it shall be the duty of the archbishops acting jointly to compile and maintain a list of all clerks in Holy Orders –

(a) on whom a penalty or censure (by consent or otherwise) has been imposed under this Measure or the 1963 Measure; or

(b) who have been deposed from Holy Orders under the 1963 Measure; or

(c) who have executed a deed of relinquishment under the Clerical Disabilities Act 1870 (c. 31); or

(d) who have resigned preferment following the making of a complaint in writing against them under section 10(1) above or under the 1963 Measure; or

(dd) whose name is included in a barred list; or

(e) who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment.

(2) Where the archbishops have included a person falling within paragraphs (a) to (dd) of subsection (1) above in the list the archbishop of the relevant province shall take all reasonable steps to inform that person in writing that they have done so and of the particulars recorded in respect of that person. That person may request the president of tribunals to review the matter and upon such a review the president of tribunals shall direct that that person should continue to be included in the list or should be excluded therefrom and, in the former case, may also direct that the particulars relating to that person should be altered in such manner as may be specified.

(3) Where the archbishops propose to include a person falling within paragraph (e) of subsection (1) above in the list the archbishop of the relevant province shall take all reasonable steps to inform that person in writing of the proposal and the particulars to be recorded, together with an

invitation to send comments or representations in writing to the archbishop within the period of twenty-one days. On the expiry of that period the archbishops shall decide whether or not to include that person in the list and the archbishop of the relevant province shall inform that person in writing of their decision. If the decision is to include that person in the list that person may request the president of tribunals to review the decision and upon such a review the president of tribunals shall uphold or reverse the decision.

(4) It shall be the duty of the archbishops to review the inclusion of a person in the list, in such manner as may be prescribed, on the expiry of the period of five years following the inclusion and also if requested to do so by that person or by the bishop of a diocese.

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

39 Code of Practice

(1) It shall be the duty of the Clergy Discipline Commission to formulate guidance for the purposes of the Measure generally and, with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice.

(2) The Clergy Discipline Commission may at any time amend or replace a Code of Practice issued under subsection (1) above by a further Code of Practice issued in accordance with the provisions of this section.

(3) A Code of Practice shall be laid in draft before the General Synod and, if it is approved by the General Synod without amendment, the Code shall be issued by the Clergy Discipline Commission.

(3A) If the Code has been approved by the General Synod with amendment, it shall be referred to the Clergy Discipline Commission.

(3B) Where a draft Code of Practice is referred to the Clergy Discipline Commission under subsection (3A) above, then the Commission may either–

(a) issue the Code as so amended, or

(b) withdraw the Code for further consideration in view of any amendment by the General Synod,

and the Code shall not come into force until it has been approved by the General Synod and issued by the Commission.

(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 is special cases

(1) In the application of this Measure to the following –
Cathedral clergy
Chaplains of prisons, hospitals, universities, schools and institutions in an extra-parochial place
Chaplains of the armed forces of the Crown

Ministers who have a licence from the archbishop of a province to preach throughout the province
Ministers who have a licence from the University of Oxford or Cambridge to preach throughout England

it shall be read with the following adaptations.

(2) In the case of a clerk in Holy Orders serving in a cathedral church, disciplinary proceedings may be instituted only by –
(a) a person nominated by the council of the cathedral church; or
(b) any other person, if the diocesan bishop concerned determines that that person has a proper interest in making the complaint.

(3) In the case of a chaplain of a prison, hospital, university, school or other institution, disciplinary proceedings may be instituted only by a person duly authorised by the diocesan bishop concerned to institute such proceedings.

(4) In the case of a chaplain of one of the armed forces of the Crown –
(a) disciplinary proceedings may be instituted only if the archbishop of Canterbury determines that the person concerned has a proper interest in making the complaint;
(b) the complaint shall be laid before the archbishop of Canterbury and references to the diocesan bishop concerned shall be construed as references to that archbishop.

(5) In the case of a minister who has a licence from the archbishop of a province–
(a) disciplinary proceedings may be instituted only by a person duly authorised by the archbishop to institute such proceedings;
(b) the complaint shall be laid before that archbishop and references to the diocesan bishop concerned shall be construed accordingly.

(6) In the case of a minister who has a licence from the University of Oxford or Cambridge –
(a) disciplinary proceedings may be instituted only by a person duly authorised by the archbishop of Canterbury to institute such proceedings;
(b) the complaint shall be laid before that archbishop and references to the diocesan bishop concerned shall be construed accordingly.

43 Interpretation

(1) In this Measure, unless the context otherwise requires –
"the 1963 Measure" means the Ecclesiastical Jurisdiction Measure 1963 (1963 No. 1);
"barred list" has the meaning assigned to it by section 30(1A) above;
"the Commission" means the Clergy Discipline Commission;
"designated officer" means an officer of the legal office of the National Institutions of the Church of England designated by the Archbishops' Council for the purposes of this Measure;

"diocese" means a diocese in the province of Canterbury or a diocese in the province of York and "diocesan" shall be construed accordingly;
"disciplinary tribunal" means a bishop's disciplinary tribunal constituted in accordance with section 22 above;
"high judicial office" has the meaning assigned to it by section 25 of the Appellate Jurisdiction Act 1876 (c. 59);
"limited prohibition" has the meaning assigned to it by section 24(1)(b) above;
"misconduct" means any act or omission referred to in section 8(1) above;
"preferment" includes an archbishopric, a bishopric, archdeaconry, dignity or office in a cathedral or collegiate church, and a benefice, and every curacy, lectureship, readership, chaplaincy, office or place which requires the discharge of any spiritual duty;
"prescribed" means prescribed by rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1);
"prohibition for life" has the meaning assigned to it by section 24(1)(a) above and "prohibited for life" shall be construed accordingly;
"relevant province" means, according to the context, the province of Canterbury or the Province of York;
"resident" means ordinarily resident;
"Vicar-General's court" means the Vicar-General's court constituted in accordance with section 23 above.

(2) For the purposes of this Measure an extra-diocesan place (including any place exempt or peculiar other than a Royal Peculiar) which is surrounded by one diocese shall be deemed to be situate within that diocese, and an extra-diocesan place which is surrounded by two or more dioceses shall be deemed to be situate within such one of them as the archbishop of the relevant province may direct.

(3) For the purposes of this Measure the seniority of diocesan bishops (other than archbishops) shall be determined by reference to the length of time that each of them has held office as diocesan in either province without interruption from any cause.

45 Rules

(1) Rules made under section 26(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1) may make provision for carrying into effect the provisions of this Measure and, accordingly, in that subsection after paragraph (e) there shall be inserted the words –
"(f) the Clergy Discipline Measure 2003;".

(2) In section 26(2) of that Measure –
(a) in paragraph (a) for the words from "commissions" to "Measures 1990 and 1994", there shall be substituted the words "disciplinary tribunals, commissions, committees and examiners provided for in the 1963 Measure, the Care of Cathedrals Measures 1990 and 1994 or the Clergy Discipline Measure 2003";
(b) in paragraph (c) after the word "courts" there shall be inserted the words "disciplinary tribunals,";

(c) after paragraph (c) there shall be inserted the words "(cc) the procedure and practice where complaints are referred to registrars under section 11 of the Clergy Discipline Measure 2003".

(3) In section 25(2)(c) of that Measure after the words "1963 Measure" there shall be inserted the words "or disciplinary proceedings under the Clergy Discipline Measure 2003,".

46 Repeals

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

47 Transitional provisions

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

(2) Proceedings under this Measure may be instituted in relation to misconduct committed before the date on which section 8 above comes into operation:

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

(3) This Measure shall not affect any censure, deposition, declaration of deprivation and disqualification or notice of inhibition imposed under the 1963 Measure, but any such censure, or declaration shall be deemed for the purposes of this Measure to be a penalty imposed under this Measure of the kind corresponding to the censure or declaration, and sections 26 to 29 above shall have effect in relation thereto accordingly.

(4) Section 30 and 31 above shall apply in relation to sentences of imprisonment passed before, as well as after, the date on which those sections come into operation.

48 Citation, commencement and extent

(1) This Measure may be cited as the Clergy Discipline Measure 2003.

(2) This Measure shall come into operation on such date as the archbishops of Canterbury and York may jointly appoint, and different dates may be appointed for different provisions.

(3) This Measure shall extend to the whole of the Provinces of Canterbury and York except the Channel Islands and the Isle of Man, but the provisions thereof may be applied to the Channel Islands as defined in the

Channel Islands (Church Legislation) Measures 1931 and 1957, or either of them, in accordance with those Measures and if an Act of Tynwald or an instrument made in pursuance of an Act of Tynwald so provides, shall extend to the Isle of Man subject to such exceptions, adaptations or modifications as may be specified in the Act of Tynwald or instrument.

SCHEDULES

SCHEDULE 1 Section 44(2).

AMENDMENT OF ECCLESIASTICAL JURISDICTION MEASURE 1963

1 The Ecclesiastical Jurisdiction Measure 1963 (1963 No. 1) shall be amended as follows.

2. In section 1(1) after the words "original jurisdiction" there shall be inserted the words "in non-disciplinary matters".

3. In section 3 –

(a) in subsection (2)(b) for the words "prolocutor of the Lower House of the Convocation" there shall be substituted the words "president of tribunals from among the persons serving on the provincial panel";

(b) in subsection (2)(c) for the words from "Chairman" to "appropriate" there shall be substituted the words "president of tribunals from among the persons serving on the provincial panel of the relevant province";

(c) in subsection (4) for the words from "Chairman" to "Courts" there shall be substituted the words "president of tribunals appoints a person to be a judge of either of the said Courts under paragraph (c) of subsection (2) of this section";

(d) in subsection (5)(b)(ii) for the words from "Upper" to "resolves" there shall be substituted the words "president of tribunals determines".

(4) In section 7 –

(a) in subsection (1A) after the word "York" there shall be inserted the words "(including that Court as constituted in accordance with the Clergy Discipline Measure 2003");

(b) after subsection (1A) there shall be inserted the following subsection-

"(1B) Each of the said Courts shall also have jurisdiction to hear and determine appeals from judgments, orders or decrees of disciplinary tribunals within the provinces for which they are constituted respectively.".

(c) in subsection (2) for the words from "(a) in a civil suit" to the end there shall be substituted the words –

"(a)in a disciplinary case, at the instance of any party to the proceedings on a question of law and the defendant on a question of fact;

(b) in any other case, at the instance of any party to the proceedings but only with the leave of the consistory court or the Vicar-General's Court as the case may be or, if leave is refused by that court, of the Dean of the Arches and Auditor".

5 In section 12 –

(a) after the words "consistory court" there shall be inserted the words ", Vicar-General's court or disciplinary tribunal";

(b) for the words "or officers of any such court" there shall be substituted the words ", members or officers of any such court or tribunal".

6 In section 47 –

(a) in subsection (1) for the words from "shall" to "in any other case," there shall be substituted the words "under this Measure shall be heard and disposed of";

(b) in subsection (2) for the words from the beginning to "proceedings" there shall be substituted the words "Proceedings under this Measure".

7 In section 49(3) for the words from the beginning to "ceremonial" there shall be substituted the words "In proceedings under this Measure".

8 In section 50 after the word "pronounced" there shall be inserted the words "in pursuance of proceedings under this Measure".

9 In section 52 after the word "deposed" there shall be inserted the words "under this Measure".

10 In section 66(1) at the end there shall be inserted the words –

"disciplinary tribunal", president of tribunals" and "provincial panel" have the same meanings as in the Clergy Discipline Measure 2003".

11 In section 67 the words from "shall be determined in accordance" to "between each other" shall be omitted.

12 In section 69 for the words "Parts IV, V and VI" there shall be substituted the words "Part VI".

13 In section 74(1) after the words "this Measure" there shall be inserted the words "for a specified time".

14 In section 76(1) after the words "this Measure" there shall be inserted the words "for a specified time".

SCHEDULE 2 Section 46.

REPEALS

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

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

Deliberation

WITH THE ASSISTANCE OF REPRESENTATIVES OF THE GENERAL SYNOD

WEDNESDAY 16 JANUARY 2013

Present

Lord Lloyd of Berwick (Chairman)
Sir Tony Baldry
Lord Bilston
Sir Peter Bottomley
Mr Ben Bradshaw
Baroness Butler-Sloss
Lord Davies of Coity
Lord Elton
Lord Glenarthur
Helen Goodman
Lord Griffiths of Burry Port
Simon Hughes
Baroness Jolly
Lord Judd
Lord Laming
Mr Gordon Marsden
Baroness Perry of Southwark
Andrew Selous
Lord Shaw of Northstead
Lord Walpole

Examination of Witnesses: Diocese In Europe Measure

Witnesses: Rt Rev Geoffrey Rowell, Bishop of Gibraltar in Europe, Mr Robert Key, Member, House of Laity, Mr William Fittall, Secretary-General, General Synod, The Venerable Christine Hardman, Synod Representative, and Ms Saira Salimi, Deputy Official Solicitor, the Church of England.

Q1 ***The Chairman:*** Before I ask the Bishop to introduce his team, could I ask whether there are any declarations of interest round the table? If not, Bishop, first of all may I thank you for coming with your team to discuss this first measure? Perhaps you could start by introducing your team to the Committee.

Geoffrey Rowell: I have Mr William Fittall, as you know, the Secretary-General of the General Synod; Ms Saira Salimi from the legal team; Robert Key, whom you will also know; and the Venerable Christine Hardman, who is also a clergy rep, not from Europe but from the General Synod.

The Chairman: May I thank you for coming? I am sorry that you are such a long way away, but this is rather a large Committee, as you can see.

Geoffrey Rowell: I can indeed, yes.

The Chairman: At the moment I can hear you and I hope others can hear you.

Geoffrey Rowell: Good.

The Chairman: Can you start by just giving us a general idea of this measure? You can be sure that we have all read your comments and explanations, which are not very lengthy in this case. Could you tell us what it is about? Then obviously you will answer any questions that the Committee has.

Geoffrey Rowell: Indeed. Thank you very much indeed. The Diocese in Europe has been in existence since 1980, when it was established under the Diocese in Europe Measure. That brought together the Diocese of Gibraltar with the Bishop of London's jurisdiction in north and central Europe. The Diocese in Europe Measure gave power to the Church Commissioners to provide a stipend for the bishop's housing and travel costs, for the suffragan bishop, to make the diocesan bishop a member of the House of Bishops and to provide for representation of the diocese in the Houses of Clergy and Laity.

The diocese has grown since 1980. Roughly speaking, it has doubled not in geographical size, because it is vast, from Madeira to Vladivostok and Casablanca to Trondheim, but in the number of congregations and chaplaincies. That, of course, has meant the pastoring of the diocese and mission outreach has become much more pressured. We have seven archdeaconries, for instance, and the archdeacons there are trying to be chaplains at the same time as archdeacons. We want to provide for greater opportunities for mission, to continue the growth that we have, and for appropriate pastoring. In order to do this, we have to have some more funding, if that is possible, and in order for the Church Commissioners to do that, this measure widens the discretionary powers of the Church Commissioners and the Archbishops' Council to make grants to the diocese. The new measure will enable the diocese to become eligible to receive grants for the same range of purposes as are other dioceses of the Church of England.

The proposed power is sufficiently wide to enable the Commissioners and the Council to respond to evolving needs, enabling payments to be made for any purpose related to the development of the diocese mission. There has been extensive consultation on the introduction of this new power, and it has the support of the mainland dioceses because there is no new money, but if we are to ask for this extra funding, the Commissioners will have to have the good will of other dioceses to have

a certain amount—not a huge amount I believe—shaved off from their grants. That has been in the consultation purposes agreed.
As we were having this amendment to the Diocese in Europe Measure, it seemed an appropriate occasion to introduce the second item that the measure deals with. That makes the Diocese of Europe's diocesan synod responsible for deciding whether to approve business referred to dioceses under Article 8 of the General Synod's constitution. That is what happens in all other English dioceses. When the Diocese in Europe Measure was passed in 1980, the Diocese in Europe had no diocesan synod and various people thought the logistics made it impossible, but we have now proved that to be untrue. Special arrangements in 1980 were made for Article 8 business to be dealt with by the Bishops' Council and standing committee, a smaller body that could be brought together and meets, in fact, once a year. Since the passage of the 1980 measure, the diocesan synod has been established for the diocese and, therefore, it makes sense to modify the process for Article 8 references to match that in other dioceses. I hope that is sufficient explanation for the two parts of this measure.
The Chairman: Yes, that is clear, if I may say so, and we are very grateful for that exposition. Are there any questions to the Bishop on the first part of this measure, namely the funding arrangements?

Q2 ***Simon Hughes:*** My Lord, happy New Year to you and colleagues, and welcome to the Bishop. I do not really have a question; I just have a paean of praise for the diocese that we are talking about, if I may put it on the record as the Bishop has come. I have since 1980 periodically used its services around the continent, most frequently in Gibraltar, where the cathedral is, to which I have been on many occasions. I just want to say I think the diocese does a phenomenally good job. I think in particular that your outreach is excellent and your literature is probably as good as that of any diocese in either of the provinces of the Church of England; really clear, really well written, really good information, prayer diaries and the rest of it. I would like you to take that to your team, as much commendation as you feel you can, but I hope it is, therefore, a very good reason, my Lord, for saying that anything that gives them the ability to access additional funds for outreach and minis try to mission should be supported, because with the very meagre resources they have and the difficulty of doing the work, as it were, without the normal base camp, I think they have done phenomenally well, and I am sure they could do even more and even better with additional resources.
On the second point, rather than interrupt the Committee later again, can I say it seems entirely sensible now to be able to mature into a fully functional diocese—
The Chairman: I think everybody will agree with what you have just said, and I think the Bishop will be delighted to have heard it.
Geoffrey Rowell: I am indeed.
The Chairman: We express our agreement to that.

Q3 ***Lord Glenarthur:*** I wonder if I could just ask the Bishop, fully accepting the explanation he has given, to what extent work has been done on just how much by way of funding was anticipated as being spent in order to make these payments available. Presumably some budgetary work has been done.
Geoffrey Rowell: There has been some exploratory work, but this is all part of the funding that is agreed by the Commissioners for the next triennium, which we have not been part of. In anticipation of this measure being enacted, there have been some discussions about that. The Secretary-General might like to come in.
William Fittall: The advantage of the proposals you have here is that it enables us so far as possible to treat the Diocese in Europe as if it were another diocese of the Church of England. There will still have to be a special discussion with the Diocese in Europe because some of the distribution of the money that the Archbishops' Council does, the money that is made available by the Church Commissioners, is distributed on a formula basis in England in relation to population, area, socioeconomic data, and, of course, that sort of formula does not work for a diocese that stretches to Vladivostok. There will have to be a special arrangement with the Diocese in Europe.
What we have tried to do up to now is to allow it not to have some of the obligations of the other dioceses. For example, it does not pay in for the costs of clergy ordination training, for the costs of running Church House Westminster and so on, and that is really to compensate for the fact that it has not had access to other funding.
There will need to be a discussion, the net result of which hopefully will be to leave the Diocese in Europe in a slightly better place but, of course, at the end of the day it is a zero-sum game because the Commissioners can release for distribution only that which will preserve the permanent value of their fund. They are a permanent endowment and, therefore, more for the Diocese in Europe potentially means a little bit less for some or all of the other 43 dioceses. I think the strength of the proposals you have today is that when this principle was discussed with the other 43 dioceses, obviously in the synod and before that in the finance forum, there was very, very strong support for treating the Diocese in Europe now as being in a sense a normal part of the Church of England. But there

will have to be a discussion, and it will probably be a settlement for each three-year period.
The Chairman: Are you happy with that, Lord Glenarthur?
Lord Glenarthur: Yes.

Q4 ***Mr Bradshaw:*** How is your work currently funded?
Geoffrey Rowell: Work is currently funded by the payment from the Church Commissioners in the 1980 measure, which is my stipend, travel expenses, office, and my suffragan bishop's travel expenses and stipend. The commissioners house the diocesan; the diocese houses the suffragan. The payments that are made to the clergy are all locally paid. Each individual chaplaincy, as we call them, when there is a vacancy, has to complete a financial statement and terms and conditions, and so the clergy are locally paid, including where there is a full stipend—because we have some on part stipends—pension contributions. There is a very small common-fund charge to the diocese that is paid to enable the administration, which is here in part of Church House, and to cover the costs of appointments processes and so on. We also take up some special collections for the funding of ordinands, of which we have a very interesting group, coming from non-English backgrounds, but some very remarkable people. The Secretary-General has said that the ordination costs are part of the pooling, so we do not do that, but we still have quite a number of things we have to sustain ourselves. Basically, it is local funding. The archdeaconries may also require some funding into their own structures for the archdeacon's expenses and for the meeting of the archdeaconry synods, which are normally residential. This is something that leaves us very little to distribute because the amount we have to distribute in our mission development fund of the diocese is no more than about £20,000 a year. That puts, I think, things into perspective.

Q5 ***Lord Elton:*** I wonder whether you could tell the Committee how much work has been done on discovering the likely effect on the local fundraising of the knowledge that there is central funding in the pipeline. In other words, do you expect the present need for extra money to increase as the result of the availability of new money?
Geoffrey Rowell: I sometimes answer that kind of question by saying that the Diocese in Europe has had to pioneer a way of funding and sustaining that is, in a way, in advance of where the Church of England is. It is local funding and commitment. The chaplaincies wished for this ability to have better pastoring, more money for mission, but they reckoned, I think, that they were unable, because of the pressures on their own funding, to provide more than a small proportion of what was required. I would believe that that would remain the case, and because we are well used, I think, to making appropriate commitments of stewardship and funding locally, I would hope that that would continue and what we will be able to do will be to put in place some structures with freestanding archdeacons with the ability—they are really archdeacons in mission—to go to places where we say there might be a possibility. The most recent one I heard about was in Astana in Kazakhstan, where the ambassadors of Canada, the UK and America had asked the chaplain in Moscow to go for a few days to provide a service. There were about 50 people who came to that. The question is, in that sort of circumstance, do you say, "Is this something that can grow into being a new chaplaincy and mission outpost?" but you need someone who has more time than the chaplain in Moscow for three or four days to go and do that kind of work.
Lord Elton: I understand and sympathise with the need, and I think it is quite right to meet it, but my slight knowledge of human nature is that if you have to raise money in order to keep your vicar well shod and housed, you are going to do it with enthusiasm, but if you know that there is a stipend already arranged for, your enthusiasm may evaporate.
William Fittall: Perhaps I can answer that. I will be surprised if the generosity of the other dioceses is so vast that it will lift from the local chaplaincies the prime responsibility for the funding of their chaplain. I think the real problem in the Diocese in Europe is this is a diocese that now has more stipendiary clergy than 25 of our 43 dioceses. It is a substantial operation. It has the diocesan bishop and a suffragan bishop. All the archdeacons in the Diocese in Europe are themselves running chaplaincies. I know this; I worshipped, myself, at a chaplaincy on the continent some years ago, and when a church loses its chaplain to be an archdeacon, he is still meant to be the chaplain while doing this other job. I think one of the things that persuaded the diocese to agree these new funding arrangements is that you can persuade people to give money for the chaplain whom they see there doing a full-time job, but actually, for running this very large operation, somebody who is going to be having a wider role, it is quite hard to raise that money. I think part of what we will be doing will be to make it a little bit easier for the diocese to run the operation. I do not think that should depress local giving at all.
The Chairman: Are there other questions?

Q6 ***Andrew Selous:*** Just very briefly; two points of information, if I may. Excuse my ignorance beforehand. Is the Diocese in Europe the only overseas diocese linked to the Church of England in this way with an expectation of funding? Are there any others anywhere in the world, or are you unique in your status?

Geoffrey Rowell: No, we are unique in our status. We are not by law established because we are outside of England, but we are the only relevant diocese. We are now recognised as a diocese of the Church of England, part of the province of Canterbury, fully participating in the synodical structures, House of Bishops of the Church of England.

Andrew Selous: Just a second very brief point. When you said from Casablanca to Trondheim, does that include Cyprus, or is that part of another diocese?

Geoffrey Rowell: That is Cyprus and the Gulf. Turkey comes in the Diocese in Europe, but Cyprus and the Gulf belongs to the province of Jerusalem and the Middle East.

Sir Peter Bottomley: Just as a matter of interest again. I am sorry to ask a question to which I do not know the answer. Were Kazakhstan defined to be outside of Europe, what would it be in?

Geoffrey Rowell: Mongolia is defined in terms of the diocese. The Bishop of London calls me the Bishop of Europe and Russia and other states, so it is rather like that. When I passed under the railway arch from Mongolia into China, I emphatically passed out of my diocese.

Q7 ***The Chairman:*** I want to ask you a question rather connected. Where does the diocesan synod meet now?

Geoffrey Rowell: We used to meet, when I first became Bishop in 2001, at the conference and pastoral centre at London Colney, but we decided we needed to move to meeting in Europe. We had one or two places where we met. We met in Rome in two different places, on occasion in Malaga, and now we have found a very good centre, which is the Kardinal Schulte Haus, which is the Archdiocese of Cologne's conference centre. It is fairly central for the distribution of our chaplaincies.

The Chairman: My other question is slightly personal. You will remain Bishop of Gibraltar, will you, as well as Europe?

Geoffrey Rowell: When it happened in 1980, the diocese was brought into being, it was bringing into being in a rather interesting way a diocese established in 1842 by letters patent and a jurisdiction established from the Privy Council in the time of Archbishop Laud. "Of Gibraltar in Europe" is the title. I have not been into the detail of the history. It was partly, I think, to avoid having to reword trust funds, and partly the sensitivities of the people of Gibraltar, so it is the Bishop of Gibraltar in Europe, and I am commonly called the Bishop in Europe and the Diocese in Europe.

The Chairman: I think we are all very grateful to the Bishop for that very clear exposition of the diocese. If there is nothing else, can we now change places and consider the other measure?

Examination of Witnesses: Clergy Discipline (Amendment) Measure

Witnesses: RT REV CHRISTOPHER HILL, Lord Bishop of Guildford, RT WORSHIPFUL CHARLES GEORGE QC, Dean of the Arches and Auditor, MR WILLIAM FITTALL, Secretary-General, General Synod, THE VENERABLE CHRISTINE HARDMAN, Synod Representative, and ADRIAN ILES, Designated Officer, Church of England.

Q8 ***The Chairman:*** Before I ask the Bishop to introduce his team in relation to this measure, are there any declarations of interest?

Baroness Butler-Sloss: I have several. First of all, I was a family judge trying endlessly child abuse cases. Secondly, I was chairman of the Cleveland child abuse inquiry in 1987-88. I was vice-chairman of the Cumberlege commission on the Roman Catholic priests in 2006, and I, about a year ago, completed a review and investigation into the Diocese of Chichester.

The Chairman: Any other declarations?

Baroness Butler-Sloss: Also, I have been reminded by the Chairman, who is the chairman of it, that I have been a member of the Court of Ecclesiastical Causes Reserved, which as far as I know has not met for 17 or 18 years.

The Chairman: I always hope we might revive it some time, and declare my role in it. Bishop, could you perhaps now, first of all, introduce your new team?

Christopher Hill: Lord Lloyd, members of the Ecclesiastical Committee: the Venerable Christine Hardman, whom you have already met; the Dean of the Arches, Charles George; William Fittall you already know; and Mr Adrian Iles from the legal team in Church House, who is the specialist for Clergy Discipline Measure material and, indeed, is a part of the process.

Q9 ***The Chairman:*** We are very grateful to you for coming to us to explain this measure, which is more weighty than the other. May we again say that we are grateful for the comments and explanations on this measure, which are amazingly elaborate, if I may say so, and careful, and in particular, what you say about the possible impact of the Human Rights Act on certain provisions in this measure. We are really very grateful for that. Having said that, perhaps you could set out for the record what the measure is about, and then afterwards we will try to confine our questions to the various matters that

you are now going to introduce, obviously starting with Section 1.

Christopher Hill: Thank you very much indeed. To understand the amendment measure before the Ecclesiastical Committee, one has to say something very briefly about the earlier measure, the Clergy Discipline Measure 2003, which came into effect in 2006. On the whole, it has proved to be a good and excellent system of exercising proper responsible discipline over clergy. That is the general feel in terms of how the measure has worked out. Of course, this piece of legislation was new in 2006 in terms of operation, and certain things have come up and there have been certain developments since then; that is why the amendment measure is before you today.

Basically, the whole measure provides a fair, modern tribunal system for exercising discipline, and I mean discipline not just from trivial complaints. This is not ever used—or if it is, it is dismissed if we have vexatious complainants—for a trivial thing like disagreeing whether the vicar has chosen the right hymns or, perhaps a little more seriously, issues to do with whether the pews are removed or disagreeing on policy. This is for serious matters where a serious penalty could be imposed.

It is perhaps just worth me very briefly saying that the penalties range. We are not talking necessarily about people losing their jobs and their livelihood. That could be the case, but penalties range from a rebuke, which is exactly what it says on the tin, to an injunction, which is more or less what a civil injunction would be, saying something should not happen or something should happen, and then removal from office—that is much more serious, of course—and also prohibition from exercising ministry, which can be for a limited period for a priest or it can be life prohibition in the most serious cases. That is the general background.

This amendment measure does a number of things. I think the one I would want to obviously draw your attention to first is the one you have already, I am sure, examined in the necessarily full detailed notes that you have received. That is the issue of it becoming cognisable as misconduct for a cleric to be a member of or to promote or to advocate support for a party or an organisation that is declared to be incompatible with the teachings of the Church of England in relation to race equality. In the measure as it stands at the moment, there is a very proper prohibition from any disciplinary proceedings in relation to membership of political parties or political views. That is absolutely right, but since the 2003 measure has come into force, issues of sensitivity to the issue of racial awareness and racial discrimination and racial prejudice have come to the fore. After a very lengthy discussion in the synod, you have the measure before you. You will have seen the voting figures at final vote: very, very, very strong support of bishops, clergy and laity, and that is important, of course.

This is to make it possible for a bishop, after a serious complaint, to take some action and for it possibly to be dealt with by the bishop, or a tribunal and, of course, with appeal procedures. This brings serious support for extremist organisations or political parties within the area of racism to be cognisant of being disciplined because it is contrary to the scriptures and contrary to the teaching of the Church: love the Lord thy God with all thy hearts and minds and love thy neighbour as thyself. It is the heart of the Church's teaching, so it is a very, very serious matter. I am sure there will be many questions on that.

Secondly, a technical matter, but an important matter, on appeal: there is an appeal procedure throughout and, of course, the procedure applies to deacons, priests and bishops. We, too, bishops, are cognisant to discipline if necessary. At the moment, there is automatic right of appeal. This is not eliminating the appeal. What is being proposed, as you will have seen, is that there is a request for appeal. That brings us into line with tribunals and the rest of the judicial system in this country. Two appeal ecclesiastical judges will look at a request for an appeal, and they will decide whether there is any merit in the case. Occasionally, respondents in these cases will appeal whatever happens, even if there is no merit at all in the case. I do not need to labour that with you, my Lord. There is a continuing appeal but a mechanism to stop unmeritorious appeals.

Thirdly, an increased power to remove a cleric from office following criminal conviction, or inclusion in a barred list established under the Safeguarding Vulnerable Groups Act 2006. At present it is possible for me—let me put it in very simple terms: I have a serious case where a priest is convicted of a criminal offence but not given a custodial sentence. Say the priest is an incumbent—I cannot do anything about it. I cannot remove the man or the woman unless there is a separate complaint and we go through either an agreement to resign or, more likely, a separate tribunal, multiplying what has already happened in the criminal courts. The proposal here is to simplify—if the priest respondent got a custodial sentence, then the bishop has an automatic right to proceed accordingly. It is extending that. Again, not to labour the point, but not every serious case of conviction goes to a custodial sentence, and so there is a necessity there for a tightening-up.

The fourth area is a number of essentially technical matters. I would assure the Ecclesiastical Committee that there is nothing hidden in those. They are purely technical, and I do not think I want to bore the Committee this afternoon with outlining them all, but of course there may be questions.

16 January 2012 Rt Rev Christopher Hill, Rt Worshipful Charles George QC, Mr William Fittall, The Venerable Christine Hardman and Adrian Iles

The Chairman: Bishop, again thank you very much indeed for that. Do any of your colleagues want to add anything to what you have just said? No, so I think we might start the questioning. Can I just suggest that by far the most convenient method of following what is being done is to follow the very useful text of the existing law with the proposed amendments: again, I thank the legislative committee for providing it? I only wish Parliament followed your example in this respect. It is extremely convenient. One finds Clause 1 is dealt with, of course, in Section 8 of the existing measure, which one finds in red on page 29 of the bundle. If you could turn to page 29 of the bundle, I will ask for any questions—I think Sir Peter Bottomley has a question.

Q10 ***Sir Peter Bottomley:*** In subclause 3 where it says, "After subsection 3 add the following subsection (4)" and it goes on—in the second to third line the words are, "to be a member of". I take that as good wording, meaning that if I happen to be a cleric and I am a member of an organisation that the bishops have not yet declared to be unacceptable, if they do, I can resign and that will clear the matter?

Christopher Hill: Yes, absolutely, and the mechanism would be that the bishops would have to vote in the House of Bishops by a two-thirds majority to make such a declaration. The General Synod may call that in and either ratify it or not, so laity and clergy come into this process, should that be thought right. The whole point, once the bishops have done their two-thirds, for example, then that does give time for the cleric to reconsider his or her position, so the answer is yes.

Adrian Iles: Could I just add that it will be a duty on the House of Bishops to publicise the declaration so all clergy will be notified accordingly.

The Chairman: Yes, thank you very much for that addition.

Q11 ***Lord Judd:*** I am very interested. On this useful paper, the provisions of the measure, at page 5, paragraph 25, you are pointing out this distinction between being a member of a party or encouraging people to support a party, and actually speaking, in effect, in support of a particular policy as of something that is part of the policy of the party. I do not quite understand, as a non-legal person, exactly how that distinction will be made. It seems to me that if there is a big public discussion about some aspect of policy and a cleric comes out in favour of something that is being said by the party, which is unacceptable as a party but comes out in favour of something it is saying, I do not quite see how you could say that that is not encouraging people to join it or support it.

Christopher Hill: Adrian Iles, I think, may wish to respond to that. Thank you.

Adrian Iles: The wording of the measure will prevent a cleric from promoting or expressing or soliciting support for the party, not for a particular policy. It would be open to a cleric to advocate a particular policy such as a financial policy, but that would not necessarily mean he is supporting the party that puts forward that policy. There may be another mainstream party that also shares that policy. There is a distinction between supporting the party and agreeing with a particular policy of that party. Of course, if a cleric wished to make it absolutely clear, he could say he supported a particular policy of a declared party but point out that, nonetheless, he wholly rejects the policies of that party on its racial policies.

Lord Judd: But you would agree there is not an absolute distinction? One merges into the other, and I could imagine that someone would say, "I was not encouraging anyone to join a party, and I was not supporting that party as such. I was just picking out a particular part of its policy and drawing it to public attention".

Adrian Iles: Any case would have to be decided on its own particular facts, yes, of course.

Lord Judd: I just suggest that there is a certain ambiguity about that point.

Q12 ***Mr Bradshaw:*** In Section 1(3)(10)—I am not quite sure what to call these sections and subsections, but it is the one under misconduct, to which Peter Bottomley has just referred—if you go down to number 10, you draw for your definition of races on the Equality Act 2010. I just wonder why you have done that when the basis of this measure is church doctrine, not state law. Given that the group that you are seeking to defend is one group that is mentioned in the Equality Act, and just one, would it not have been more politic simply to draw on church doctrine rather than state law for your definitions?

Christopher Hill: Any declaration by the House of Bishops would, of course, include very substantial discussion of what are, strictly speaking, doctrinal matters. This is legislation, it is ecclesiastical legislation, and, therefore, in the drafting it was felt right to look at the good example of parliamentary Acts in this area.

Adrian Iles: We have to have a definition of races. That is what is used in subsection 4, and the Equality Act is the appropriate Act to draw upon in defining races. The definition in Section 9 is quite clear, so there is no doubt what is meant by this particular provision.

Q13 ***Simon Hughes:*** Two questions, please; first, can you give us the list of those political parties or organisations that have been the subject of any declaration or are formally considered as likely to be the subject if this is implemented? I will ask the second question because they are linked

a bit. I can see what you are trying to do and I support it. I have no problem with the thrust of the measure and what the Church is trying to do, and I understand its theological basis, but my experience is that political parties and organisations that you are seeking to address here come and go, merge, arise or disappear. Their members, indeed their leaders, suddenly disappear from one place and pop up somewhere else. I just wonder what thought you have given to the fact that there is a danger you will be running after the event in this case. If I was an astute lawyer defending my clerical client who was being accused, I might say, "I have never supported an organisation or political party. I was supporting the views on something of Mr X", who at that moment, of course, was not a member of any organisation because he had just been kicked out of one or had not joined the other. It is a real question based on experience of my own constituency, where we have dealt with the same people under different guises at different elections and at different periods.

Christopher Hill: There is, of course, no declared party or organisation at the moment, because the legislation is not enacted.

Simon Hughes: But have you considered which might be on the list?

Christopher Hill: No, but we are very well aware that political organisations of this extremist kind are chameleon-like and they can change title, they can change name, and apparently change policies. That was taken into consideration in the discussion about the draft measure, and that is why the mechanism is the House of Bishops, which is rather more flexible. It has to be endorsed by the synod if the synod call it in, but that is precisely to give some flexibility there. We are very aware of the practical difficulties in this area. I can speak of an example of my own when I was Bishop of Stafford. We had independent members standing for the city council, but "independent" was actually proxy for an extremist party, and that has happened in a number of places. I am very well aware of that, and no one, least of all the bishops, thinks that this will be an easy task but we do believe it is right to have a mechanism that could be used in an extreme situation.

William Fittall: Could I just add two points? Obviously, the bishops could not yet have reached the point of decision because they do not have the power to do so. It is worth saying that the synod motion that preceded the legislative process did specifically refer to the British National Party. The synod did have the British National Party within its sights when it passed the motion commissioning the legislation.

I think the second point is that part of the purpose of this is clearly declaratory and deterrent. Happily, there is very little evidence of support among the clergy for parties or groups of this kind. When there was the leak of the British National Party membership list some time ago, there was no licensed member of the clergy of the Church of England on that list, though there was an ordained member of the clergy who no longer had permission to officiate. It is not an entirely theoretical point, and I think that this is very much conceived as something that is important from a declaratory and a deterrent point of view, but some of the casework, as has been said, may be quite difficult.

The Chairman: Could I perhaps just add a comment on Mr Hughes' question? I remember the problem of mutating organisations and how one pins them down. We had exactly the same problem, I recall, when we were trying to proscribe terrorist organisations under the Terrorism Act. The argument always was it cannot be done because they keep on changing. But it has been done and it does somehow or other work. One would hope that it would here.

Q14 ***Lord Laming:*** I take seriously the point raised by Mr Hughes and, indeed, by you, Chairman. I was comforted, and I hope that I was right to be comforted—maybe the Bishop could just reassure me—because when I read this it seemed to me that the whole thrust of the document was that it would depend on individual circumstances and the evidence in the individual case, and, more than that, there would be two tests, one which is of reasonableness in the circumstances, but also the safeguard that we built in by the referral upwards who would have a further chance to review the reasonableness of the case that had been brought and the way in which that case had been handled. I hope that I am right, because I thought that this is very much what I think is the correct way to do it, which is to assemble evidence on the basis of the reasonable action within the circumstances in which it takes place.

Christopher Hill: Indeed, and any complaint in this area would go through all the proper checks and balances, proper guarding of the rights of the respondent as well as the complainant, and I would wish to give that assurance.

Q15 ***The Chairman:*** Any other questions? I thank you and your colleagues for all the help you have given us so far.

Simon Hughes: I have question on the second part, the things that are not on misconduct.

The Chairman: Of course. We have only so far dealt with one brief section. I think we can probably move on to Section 2. I was worried about something else on Section 1, but it has not arisen, so let us forget it. I do not suppose anybody wishes to ask about penalty by consent, do they, which is Section 2? Then, on right of appeal, there may be some questions.

Mr Marsden: Perhaps I could echo what Simon Hughes said earlier. Speaking for myself, I am thoroughly in favour of the principles behind this measure and of the route that you are taking to effect them, notwithstanding the problems of nomenclature and chameleon and whatever else. I do have to say, however, that I would appreciate, although I have looked, obviously, at the arguments and the justifications, some more comment from our colleagues on the justification of amending the absolute right to appeal. I say that on two grounds. First of all, philosophically, if I can put it that way, I am rather uneasy about the principle of not having absolute rights of appeal. I understand why they take place in judicial and sometimes quasi-judicial situations, but, of course, they can be subject to abuse. Therefore, I start with a predisposition that the argument has to be made very strongly against denying an absolute right of appeal.

My second point is, particularly regarding the sorts of groups of people who might wish to march to states of their own construction, that it may not pragmatically be the best way of proceeding, because if you have a situation in which—and I take the points that are made in here about frivolous or without-weight appeals—someone is denied a right of appeal, their ability to misrepresent the grounds on which that right of appeal has been refused, particularly if it is in a particularly charged area such as race relations and everything, might put the Church on the back foot in these matters, whereas, in fact, it ought to be on the front foot. I am not arguing as a result of that automatically that there should not be a change and there should not be leave for appeal, but I think I would like to hear a rather more substantial argument in favour of it than I have seen so far in the document.

Christopher Hill: I am going to ask the Dean of Arches to respond to precisely that.

Charles George: The appeal would be coming to me, sitting either with a clergyman or sitting with a lay person who would be the other ecclesiastical judge, considering the application for leave to appeal. There could be no question of anyone not understanding the reason why they had been refused leave to appeal because we would always give reasons. Quite apart from any obligation to do that, that has always been the practice of the Court of Arches and the Chancery Court of York in the exercise of the faculty jurisdiction. In that capacity, I give quite lengthy reasons in cases where I, in that case sitting on my own, refuse permission or leave to appeal. As I say, I do not think there will be any dubiety in that area.

I think it is wholly exceptional in the modern judicial system to have absolute rights of appeal. It was not always so, and certainly in the 1970s and the early 1980s there were still many instances where one had an automatic right of appeal in civil proceedings. I think in the criminal proceedings the limitation came rather earlier, but now it is wholly exceptional because it is thought appropriate to have a filter. I would not seek to defend this measure by saying that there are countless hopeless appeals. That is not the position, because happily the number of cases coming on appeal is very few. It would be possible to cope with them without taking away an absolute right of appeal, but it is very costly to have appeals and it does delay the process enormously. One does have a number of instances where really a decision has to be taken and finality has to be achieved. It really is not very satisfactory, as happened in one case last year, that one had an appeal that, quite plainly I think, would have been rejected at permission stage. It was against on the facts and on sentence, but the appeal on facts was there was no attempt to introduce any further evidence and, therefore, it was inconceivable that it was ever going to succeed on the facts. So far as the sentence, as it turned out, the sentence below was a rather modest sentence, and that sentence remained. That was a case where to bring together the full tribunal of five and go through all the necessary paperwork and so forth seemed to be a very expensive process serving very little useful purpose.

Q16 ***The Chairman:*** Are you happy with that?

Mr Marsden: I am not happy, my Lord, but I will confine my comment to saying that while I respect what has been said—I am not a lawyer, but I am aware of the process of restriction—I think with respect that the Dean of Arches is talking about the present construction of this measure. I am talking about the future construction of this measure, and I am talking about the future construction to which, for entirely valid and laudable reasons, the synod has decided to introduce a much more sensitive and potentially politically—and I use "politically" with a small "p"—charged set of criteria. In those circumstances, I do feel that the arguments that have been made—which, as I say, relate to the present use of this measure, not to the future use of it—need to be weighed against the pragmatic and what I said previously about the Church not being put on the back foot, rather than staying on the front foot. Therefore, I have to say I am not entirely convinced by that argument.

The Chairman: Any other questions on that aspect?

Baroness Butler-Sloss: Could I perhaps say something? I particularly want to endorse what the Dean of Arches has said. The judiciary, particularly of the Court of Appeal, in the 1990s changed a very long procedure of automatic rights of appeal to leave to appeal in every single case except liberty of the subject. It has worked extremely well. I was in the Court of Appeal for many years, and the fact was, if a case had any merit whatever, it had the opportunity to go forward to appeal, but it got

rid of a large number of cases that had no merit, particularly on facts that could not be changed and in cases where someone was just having a second go and hoping that life might be a bit better. I cannot quite see why the clergy should be in a different position from the rest of the public, whoever they may be, who have to have leave to appeal. I have no doubt at all that the Dean of Arches will look very carefully on leaves to appeal and where there is merit he will, of course, give leave. I do not see any problem with this, I have to say, at all.

The Chairman: Could I perhaps just add one comment on that? Of course, a difference is that we have heard from the Dean of Arches that, in fact, he as a matter of practice always does give reasons when he refuses leave. That is not the case in the Court of Appeal, of course.

Baroness Butler-Sloss: I always did, but it is not always the case.

The Chairman: You do not have to. So perhaps the Church in that respect is a bit more favourable, Mr Marsden, than the ordinary courts. Mr Hughes wishes to speak.

Q17 ***Simon Hughes:*** Just two factual questions; under present arrangements, please could you tell us, Mr Dean, what the number of appeals has been in the last year or five years or some period?

Charles George: The number of appeals has been, happily, extremely small. There has only been one appeal in the Chancery Court of York since 2006, and there has only been one appeal in the province of Canterbury. Of course, you would not expect any appeals to start coming through until about 2009, probably, so it is slightly less than one a year. That is why I said I would not want to base the case on the fact that there is a court workload that could not possibly cope. One could cope; it is just a question as to whether it is a sensible use of resources.

Can I just add one other matter? That is, of course, that the grant of permission to appeal in the Court of Appeal is by a single judge. Here, deliberately, two people are to reach the decision on leave to appeal, and if one of the two believes that leave to appeal should be given, then it is to be given.

Adrian Iles: May I just add on the part of the question of policy, really, that an appeal involves not just justice for the respondent but also justice for the complainant, and also for the parish involved and the Church as a whole. In many cases that go to the tribunal, they are sensitive cases where complainants are very much involved. They have given evidence. They are often about personal, sensitive matters, and if an unmeritorious appeal is allowed to go ahead to a full hearing, it does delay finality in that case. It delays finality for the complainant, and it effectively ensures that the complainant continues to suffer as a result of the case until there is a final decision. That is part of the policy behind it. This provision does not stop appeals with merit from going ahead. It simply stops appeals with no merit from going ahead, and that must surely be the right and proper thing.

Q18 ***Simon Hughes:*** My last question, my Lord Chairman, and you and Lady Butler-Sloss are far more competent in these areas than the rest of us. Was any thought given to what happens in some of the non-ecclesiastical courts, which is that there is an application for leave to appeal but there is a process for appealing that decision as opposed to the substantive decision, which is the other interim opportunity?

Charles George: The answer is yes. Some preliminary consideration was given to it. It presents a very considerable difficulty of knowing to whom the further appeal would go, because we are a very small jurisdiction. One would have to be inventing, as it were, a deutero Dean of the Arches who would be going to sit unless one said that it was an appeal then to the full court, but then the Dean would be a bit parti pri because he would already have expressed a view initially, which I think would not be very satisfactory. To have an appeal, therefore, to only a four-member tribunal without the Dean, with just the lay and clergy, would not work. I suppose one could then appoint a deputy. Another ecclesiastical judge could be brought in, so it would be possible.

Q19 ***Lord Elton:*** I came to this with a determination to leave everything to lawyers because this is a lawyers' issue, but I think a layman's view is a useful illustration. As a habitual member of your Lordship's House, listening to financial concerns, I picked up that one of the main motivations, as I understood it, for bringing about this change was financial. It was expensive. When, therefore, I heard that there was one case a year, I did rather wonder what the amount of that expense might be that it would set this great engine of change in process. I wonder if we could be told what the typical cost of an appeal would be. Can we have an answer to that?

Adrian Iles: No two cases are alike, but—

Lord Elton: Well, an average.

Adrian Iles: —The cleric would have legal representation, there are costs involved in that. There are the costs of physically setting up the court; five members. The court is served by a registrar, the provincial registrar, who charges fees. The case on behalf of the complainant is presented by the designated officer—that is me—who is salaried within the legal office, but it is a question of time being taken up. I have no deputy. There is no other person who can deal with these cases as such. If witnesses were to be called in an appeal, which is possible because the court can give leave for witnesses to be called, there is the cost of those

witnesses attending, possibly staying overnight and so on. I cannot give you a ballpark figure, but there are a lot of costs involved in the different parts of the appeal, and sometimes there may be a preliminary hearing as well, directions hearings and so on.

Christine Hardman: I think the major cost, if I may—discounting the financial cost, which actually if it is a small number of appeals is quite small—or the hidden cost is that already, with any case of an incumbent in particular coming to a tribunal, a parish has been deprived of the ministry of their parish priest and they cannot go ahead. It is not like your parish priest has retired. You cannot go ahead into the process to find a new parish priest to lead you forward. You are in a state of almost paralysis while this process goes on, and that is inevitable. I support that an appeal is not automatic, the right of appeal, because the rights of the individual, which I do hold very seriously, have to be balanced, and particularly so when you are talking about priest and people. The rights of the priest have to be balanced against the needs of the people whom they are serving. An appeal without merit will delay really seriously further the ability for resolution to be sought for the parish. I think the cost is in ministry and the furtherance of ministry in the Church, and that is far more significant than the financial cost, actually.

The Chairman: That is very helpful, thank you. I think we have had a very good discussion of rights of appeal, so could we now go on to Clause 4, which is the last of the three main subject matters of this measure, dealing with criminal offences. Yes, Bishop, if you can introduce that again. Is there anything you wish to add on that?

Christopher Hill: I do not think I have anything to add to what I said.

Q20 ***Baroness Butler-Sloss:*** May I say I strongly support your amendments to the measure. I think they are admirable, and I am particularly relieved to see that you include barring, which will be both for children and also for vulnerable adults, who are as important as children and very often have been neglected in the past.

My experience from being on the Roman Catholic Cumberlege commission was that we were looking there particularly at the position before conviction, when there is a strong allegation against a priest, and what happens to that priest in the period between the allegation being made and being properly considered and the point at which there will be a decision. In the Cumberlege commission, the recommendation was made that that priest should be suspended pending the decision. You do not deal, of course, with pre-conviction in this measure, so what is the position in the Church of England with a priest against whom a very serious allegation of some form of abuse has been made but has not yet been determined?

Adrian Iles: Section 30 of the Clergy Discipline Measure provides a simple procedure for removing a cleric from office where there has been a conviction and a prison sentence. Where at the moment there has not been a conviction or there has not been a prison sentence, it is still open for a complaint to be presented under the measure, which then goes through the full process. If misconduct can be proved, regardless of what is happening in the criminal case—the criminal case could be dropped—a complaint can still be presented under the measure at the moment, and it makes its way through the full process.

Baroness Butler-Sloss: I am sorry, the question I am asking is about the stage between the allegation and the conviction or the barring on the barring list.

Adrian Iles: With any complaint that is made under the measure, there is a power for the bishop to suspend.

Baroness Butler-Sloss: He has a power?

Adrian Iles: He does have a power, and it is exercisable early on within the procedures. The bishop has power to suspend once he has received what we call the preliminary scrutiny report from the registrar, advising the bishop on whether there is sufficient substance for complaint and whether the complainant has a proper interest in the matter. Then the bishop can suspend.

Baroness Butler-Sloss: It does not come within the measure?

Adrian Iles: That is under the Clergy Discipline Measure, so that is already in place. That does not need to be amended as such.

Baroness Butler-Sloss: I was looking for it, yes.

Adrian Iles: This is adding to the powers that are already in the measure.

Q21 ***The Chairman:*** In relation to suspension, I thought there was an addition to it in Clause 6 of the measure. It is covered also in the measure, is it?

Adrian Iles: Yes.

The Chairman: We rather skipped out the other point on Clause 4, which we could perhaps come back to. The important thing is that it extends from where the sentence is one of imprisonment to other sentences.

Adrian Iles: Yes.

The Chairman: Are there any other questions on that before we go on? Perhaps you could again just justify why imprisonment is not enough.

Charles George: Two examples that occur are: downloading of pornography might be dealt with by a higher-level community sentence, rather than by a custodial sentence, even a suspended sentence. In that case, one has something that might be regarded—indeed I think inevitably should be regarded—as an offence that is wholly inappropriate conduct by a clergyman, which is deserving, therefore, of going through this expedited procedure towards an ecclesiastical

sanction, rather than having to go right back to the beginning through a complaint.

The second matter might be a clergyman or a clergywoman who was involved in an assault. I am sure the members of this Committee will know that there are now guidelines to the courts on sentencing and there are a number of circumstances where even for crimes of violence, which some time ago would automatically have led to a custodial sentence and not very often to one even being suspended, now fall within the bracket where, certainly for a first offender again, the sentence is a non-custodial sentence. It might be, and this, of course, is going to include also matrimonial and domestic violence and so forth, again in those circumstances, while the criminal courts may have chosen to deal with it in that way, it is the more serious for a clergyman or a clergywoman and ought, so we believe, to count as something that can trigger the expedited procedure. Of course, the Committee will be aware that it does not mean that automatically that person is then going to be deprived and he or she will have the opportunity to make representations and so forth, but it simply looks to that sort of matter, which I think should properly be regarded as serious.

Q22 ***The Chairman:*** If there are no further questions on Clauses 4 or 5, or indeed 6 or 7, which is dealing with suspension, does anybody want to ask about the archbishops list on Clause 8, Clause 9 or Clause 10? The schedule I think does not involve anything of any great importance.

If there are no other questions, perhaps I could go back to where I was some few minutes ago and to thank you—the four of you had to deal with various matters—very much indeed on behalf of the Committee for coming and giving us such very helpful advice in this matter.

Christopher Hill: Thank you.

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