

GENERAL SYNOD
LEGISLATIVE COMMITTEE
Safeguarding (Code of Practice) Measure
Comments and explanations

The Safeguarding (Code of Practice) Measure amends the Safeguarding and Clergy Discipline Measure 2016, replacing the existing duty to “have due regard” to House of Bishops’ safeguarding guidance with provision for a safeguarding code of practice which may impose requirements on, as well as give guidance to, “relevant persons”. It also expands and updates the list of relevant persons and provides a new power for the bishop to suspend a churchwarden who fails to comply with the code of practice.

Introduction

1. The Legislative Committee of the General Synod, to which the Measure entitled Safeguarding (Code of Practice) Measure (“the Measure”) has been referred, has the honour to submit the Measure to the Ecclesiastical Committee with these Comments and Explanations.

Policy background

2. In its 2019 report¹ on case studies relating to Bishop Peter Ball and to the Diocese of Chichester, the Independent Inquiry into Child Sexual Abuse (IICSA) made a number of recommendations, all of which were welcomed by the Archbishops’ Council and subsequently endorsed by the General Synod.
3. One of those recommendations was concerned with the current statutory duty to “have due regard” to safeguarding guidance issued by the House of Bishops². IICSA described “due regard” as a “term of art” which lacked sufficient clarity and was not generally understood. IICSA recommended that ecclesiastical legislation was amended to make the nature of the obligation clear.

Overview of the Measure

4. The Measure amends the Safeguarding and Clergy Discipline Measure 2016 (“the 2016 Measure”). It replaces the duty to have due regard to safeguarding guidance with provision for a safeguarding code of practice which may impose requirements on relevant persons, as well as giving guidance to them. A relevant person to whom a requirement applies will be obliged to comply with that requirement. Guidance contained in the code will assist relevant persons in understanding how to comply

¹ *Anglican Church Case Studies: Chichester/Peter Ball Investigation Report* (May 2019), available at <https://www.iicsa.org.uk/publications/investigation/anglican-chichester-peter-ball>.

² See recommendation 2 (which mistakenly refers to Canon C 30; the duty to have due regard is contained in section 5 of the Safeguarding and Clergy Discipline Measure 2016).

with the requirements the code imposes on them. As was the case with the former guidance, codes of practice will continue to be issued by the House of Bishops.

5. The amendments made by the Measure also extend the current list of “relevant persons” so that (as well as the clergy, licensed lay persons, churchwardens and parochial church councils) it also includes diocesan bodies such as diocesan boards of education and finance, bodies carrying out mission initiatives, staff of the Archbishops’ Council with safeguarding responsibilities (e.g. staff in the National Safeguarding Team) and those with safeguarding responsibilities in dioceses, parishes and mission initiatives. (The Cathedrals Measure 2021 added cathedral chapters to the list of “relevant persons” and their addition is reflected in this Measure.)
6. An amendment is also made to the Churchwardens Measure 2001, expanding the circumstances in which the bishop may suspend a churchwarden to cover the case where a churchwarden has failed to comply with a requirement of the safeguarding code of practice. As with the existing power to suspend churchwardens, any churchwarden suspended under the new power will be entitled to appeal to an independent judge (see paragraph 34 below).

Proceedings in the General Synod

First Consideration

7. The Measure was introduced into the Synod for First Consideration at the remote meeting of the Synod held in November 2020. A number of points about particular aspects of the Measure were raised but it was generally favourably received. The motion that the Measure be considered for Revision in Full Synod (without a Revision Committee stage) was carried with 340 votes in favour and 30 against.
8. In December 2020, the Steering Committee of members in charge of the Measure issued a note which addressed matters which had been raised in the First Consideration debate. A copy of the Steering Committee’s note is annexed to these comments and explanations.
9. The Revision Stage was taken at the April 2021 group of sessions (also held remotely). The Steering Committee moved the amendments it had set out in its note. All of those amendments were agreed by the Synod with overwhelming majorities. No amendments were proposed by members in their individual capacity.
10. The principal amendments agreed on the Revision Stage were:
 - the inclusion of a requirement for the House of Bishops to be satisfied that sufficient and appropriate consultation has been carried out before it issues a safeguarding code of practice;
 - the inclusion of provision so that a safeguarding code issued by the House of Bishops does not come into operation until it has been approved by the General Synod, with the Synod being deemed to have approved a code unless within three weeks of its publication 25 members request that the code be debated;
 - a power for the bishop to suspend a churchwarden if satisfied that the churchwarden has failed to comply with a requirement of the safeguarding code;

- a power to amend the list of “relevant persons” to whom the content of the safeguarding code is addressed using secondary legislation.

11. The Final Approval Stage was also taken at the April 2021 group of sessions of the General Synod.

12. The voting on the motion for the final approval of the Measure was as follows—

	In favour	Against
Bishops	29	0
Clergy	131	0
Laity	146	0

Commentary on sections

Section 1 Code of Practice

13. Subsection (1) inserts new sections 5A to 5C in the 2016 Measure.

14. **New section 5A (Code of Practice)** contains the main provision for a code of practice on safeguarding children and vulnerable adults.

15. New section 5A(1) imposes an obligation on the House of Bishops to issue a code of practice for relevant persons on safeguarding children and vulnerable adults. The House of Bishops may revise the code of practice.

16. New section 5A(2) sets out, by means of a list, who is a “relevant person” for the purposes of the code of practice. Paragraphs (a) to (g) cover the same office holders and bodies as currently come within the list of relevant persons in section 5 of the 2016 Measure. Paragraph (h) provides that the chapter of a cathedral is a relevant person, reflecting a change made by the Cathedrals Measure 2021. Paragraphs (i) to (n) add further bodies and persons to the list of relevant persons. Diocesan Boards of Education and Finance and other statutory diocesan bodies will be relevant persons, as will any body that is established to carry out a mission initiative under a bishop’s mission order. Staff of the Archbishops’ Council who work in the field of safeguarding (e.g. the National Safeguarding Team) and independent contractors engaged by the Council will be relevant persons. So too will individuals – including some volunteers – who have specific safeguarding responsibilities in dioceses, parishes and mission initiatives.

17. New section 5A(3) enables the code of practice to impose requirements on relevant persons, and to give them guidance on compliance with those requirements.

18. New section 5A(4) provides that a relevant person must comply with a requirement imposed on that person by the code. (There is no duty to comply with the guidance, as the guidance is given to assist a relevant person to comply with the requirements of the code.)

19. New section 5A(5) enables the code to specify exceptions to the requirements it imposes so that it can appropriately provide for particular situations that do not fit the general pattern. New section 5A(6) – for similar reasons – enables the code to authorise a person of a specified description (e.g. a diocesan safeguarding adviser)

to make an exception, so that the particular circumstances of unusual cases can be dealt with appropriately.

20. New section 5A(7) provides that instead of a single safeguarding code of practice, the House of Bishops can – should it wish to do so – issue separate codes dealing with different matters. If separate codes are issued, references in other legislation to the safeguarding code of practice is to be read as reference to each or any of the separate codes.
21. New section 5A(8) defines “Diocesan Board of Education” consistently with the provisions for the establishment of those bodies in the Diocesan Boards of Education Measure 2021.
22. New section 5A(9) enables the Archbishops’ Council to amend the list of relevant persons by secondary legislation so that it can be updated as future circumstances may require. Such secondary legislation will be subject to the order-making procedure in section 6 of the 2016 Measure. That procedure requires that a draft of an order must be laid before the General Synod for approval by it (with or without amendment) before it can be made by the Archbishops’ Council. The made order must take the form of a statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament (the negative procedure).
23. **New section 5B (Code of Practice: consultation)** imposes requirements as to consultation in respect of a proposed code of practice issued under section 5A.
24. New section 5B(1) requires that the House of Bishops must be satisfied that sufficient and appropriate consultation has been carried out before it issues or revises a code.
25. New section 5B(2) provides that in deciding whether it is so satisfied, the House of Bishops must in particular assess whether, and if so, to what extent, it would be appropriate to consult specified persons and groups. Those persons and groups include persons, or groups of persons, who have suffered violence, abuse, neglect or exploitation in a setting or relationship to which the safeguarding code applies. They also include the president or deputy president of clergy discipline tribunals and the standing committees of the Houses of Clergy and Laity.
26. **New section 5C (Code of Practice: scrutiny and commencement)** makes provision for scrutiny by the General Synod of safeguarding codes of practice.
27. New section 5C(1) provides that a code does not come into operation unless and until it has been published online and a copy sent to each member of the General Synod and the code has been approved by the Synod.
28. New section 5C(2) provides for a code to be deemed to have been approved by the Synod unless within three weeks of its publication at least 25 members give notice that they wish the code to be debated. If 25 members give notice, new section 5C(3) applies and requires arrangements to be made for the Synod to debate, and decide whether to approve, the code.
29. New section 5C(3) and (4) provide for the interpretation for certain references in new section 5C.
30. **Section 1(2) of the Measure amends the Churchwardens Measure 2001** by inserting provision empowering the bishop to suspend a churchwarden if the bishop is satisfied that the churchwarden has failed to comply with a requirement imposed by the safeguarding code of practice.

31. The bishop already has the power, under the Churchwardens Measure 2001, to suspend a churchwarden if the churchwarden is arrested or charged in relation to an offence listed in Schedule 1 to the Children and Young Persons Act 1933 (CYPA). The bishop may also suspend a churchwarden if satisfied, on the basis of information provided by a local authority or the police, that the churchwarden presents a significant risk of harm in relation to a child or vulnerable adult. Suspension lasts for three months and is renewable. If the matter in relation to which the suspension was imposed is concluded, the suspension comes to an end. In the event that a person is convicted of an offence listed in Schedule 1 to CYPA, or is added to a barred list under SVGA, the person will become disqualified from serving as a churchwarden.
32. However, of the list of relevant persons in the new section 5A, the only persons in respect of whom there are currently no means at all of enforcing their compliance with safeguarding responsibilities are churchwardens. Some means of enforcement already exists in respect of the clergy (under the Clergy Discipline Measure 2003), lay persons who are licensed to exercise ministry (under the relevant Canons), parochial church councils, diocesan boards of education, diocesan boards of finance, other diocesan bodies and bodies established to carry out mission initiatives (under the Charities Act 2011), cathedrals (by visitation), staff (under their employment contracts) and volunteers (by removing them from a role).
33. Accordingly, section 1(2) amends the Churchwardens Measure 2001 so that the existing power of the bishop to suspend a churchwarden on safeguarding grounds (see above) is extended to include the case where a churchwarden fails to comply with a requirement imposed upon churchwardens by the safeguarding code. The power to suspend is discretionary and it is not envisaged that it will be exercised for minor matters which are likely to be better addressed by training.
34. A churchwarden who is suspended for non-compliance will have a right to appeal against the suspension to the President of Tribunals (as he or she currently has if suspended on either of the existing two grounds – see above) under section 6B of the Churchwardens Measure 2001.
35. Section 1(3) makes amendments to the Churchwardens Measure 2001 which are consequential on the amendment made by section 1(2).
36. More detailed consideration of the position of churchwardens and others is contained in paragraphs 17 to 23 in the Annex.

Section 2 Amendments and repeals

37. Section 2(1) repeals the existing provisions of the 2016 Measure which provide for relevant persons to have due regard to safeguarding guidance.
38. Section 2(2) makes an amendment which is consequential on the insertion of new section 5B (see above). It amends section 6 of the 2016 Measure so that, if the definition of “vulnerable adult” were to be amended under the existing order-making power in section 6 of the 2016 Measure, the terminology used in the proposed new section 5B(2)(a) (which is based on the definition of “vulnerable adult”) could be amended in an equivalent way to ensure consistency.
39. Section 2(3) and (4) make consequential amendments to, respectively, the Church Representation Rules and the Clergy Discipline Measure 2003.

40. Section 2(5) and (6) repeal provisions in the Cathedrals Measure 2021 and the Diocesan Boards of Education Measure 2021 which refer to the replaced duty to have due regard to safeguarding guidance.

Section 3 *Short title, commencement and extent*

41. Section 3 makes standard provision for the short title of the Measure, its commencement, extent and related matters.

Conclusion

42. The Legislative Committee invites the Ecclesiastical Committee to issue a favourable report on the Measure. Should the Ecclesiastical Committee require any further information or explanation, the Legislative Committee stands ready to provide it.

On behalf of the Legislative Committee

Geoffrey Tattersall

Deputy Chair

June 2021

GENERAL SYNOD
SAFEGUARDING (CODE OF PRACTICE) MEASURE
STEERING COMMITTEE

Responses to matters raised in the debate on First Consideration and in correspondence

1. About a dozen members of the Synod spoke in the First Consideration debate on the Measure at last November's remote group of sessions. Most of them suggested that the draft Measure might be amended in various respects.
2. As this Measure is being fast-tracked in the Synod, any amendments will be formally considered on the floor of the Synod without having previously been considered by a revision committee. The Steering Committee ('the Committee') has therefore considered the points that were raised in the First Consideration debate, and in subsequent correspondence it has received, and whether it should propose any amendments itself at the Revision Stage in full Synod at April's deferred group of sessions.
3. This paper describes the issues that were raised in the First Consideration debate and in subsequent correspondence and sets out the Committee's views on them. Annex A contains amendments which the Committee intends to move at the Revision Stage, together with extended explanatory statements. Annexes B and C contain marked-up texts showing how relevant provisions would look if they were to be amended as proposed by the Committee.

Code of practice model

4. One member expressed concerns that because a code of practice was 'soft law' it would not be a suitable means for imposing safeguarding requirements.
5. The Committee noted that statutory codes of practice take a number of different forms. The Equality Act 2006 requires the Equality and Human Rights Commission (EHRC) to issue codes of practice. Failure to comply with a provision of a code issued by the EHRC does not itself make a person liable to criminal or civil liability; but if a person fails to comply with a provision of a code, that failure is to be taken into account by a court or tribunal hearing proceedings in which the failure appears to be relevant.
6. By contrast – to take another example – the School Standards and Framework Act 1998 requires the Secretary of State to issue a code for school admissions. The code may impose requirements on a list of persons and bodies, including local authorities, governing bodies, appeal panels and adjudicators. The code may also include guidelines. Each of the persons and bodies listed in the Act is under a statutory duty to act in accordance with any relevant provision of the code.
7. The code envisaged by the draft Measure is very similar in nature to the admissions code under the School Standards and Framework Act.
8. If it is desired to impose requirements – i.e. to make doing certain things in certain situations mandatory – the only alternative to proceeding by way of the sort of code the Measure provides for would be by way of regulations. But regulations are legislation. They are drafted by lawyers, with the same precision and detail as an Act or Measure. The Committee considers that a code of practice

which clearly sets out the requirements in non-legal language alongside – but clearly distinguished from – guidance is more suitable for this purpose.

Consultation

9. The Committee considered that greater confidence would be placed in the content of the code if there were a statutory requirement for consultation to take place before it was issued. The Committee also recognised that as the Measure provided for there to be more than one code, that a code could consist of elements that were subsequently added, and that a code could be amended in a major or in a minor way, it would not be proportionate for the same consultation process to be followed in every case.
10. The Committee accordingly proposes that before issuing a code under the new provisions, the House of Bishops must be satisfied that sufficient and appropriate consultation has been carried out. What is sufficient and appropriate is a matter of judgement and will vary according to the nature and content of what is being issued. The Committee therefore proposes that the Measure should require the House of Bishops to assess whether persons and bodies of particular descriptions, set out in the Measure, should be consulted in a particular case. The persons and bodies to be considered as consultees should include victims and survivors of abuse, the president or deputy president of tribunals and the Standing Committees of the Houses of Clergy and Laity. **Amendment 4** in Annex A would give effect to this proposal.

Synodical scrutiny of the code

11. Several members suggested that the code of practice should not simply be made by the House of Bishops but should also be subject to scrutiny by the General Synod.
12. The Committee is inclined to agree with this view. The existing arrangement is that the House of Bishops issues guidance without Synodical scrutiny. The guidance is very weighty but a person is entitled to depart from it if there are cogent reasons for doing so. The new code of practice will have greater legal force than guidance. It will impose requirements on relevant persons and they will be legally obliged to comply with those requirements; they will not be able to rely on cogent reasons to depart from them. The code is more akin to legislation than the current guidance.
13. If it is considered that the code of practice should be subject to Synodical scrutiny, the most straightforward approach would be a requirement that the code be laid before the Synod and not come into operation until the Synod has approved it. But, as the General Synod usually only meets twice a year, that would build in an automatic delay to the process of issuing a code (or amending a code) even if it were uncontroversial.
14. One of the members who raised this issue suggested that unnecessary delay could be avoided if the requirement involved a code being laid before the Synod and coming into operation automatically unless, within a specified period, 25 members required it to be debated.
15. The Committee noted that there was a precedent for this approach in the Clergy Discipline Measure 2003. Section 8 (misconduct) makes it misconduct for a member of the clergy to do certain things amounting to support of political parties and organisations whose policies etc. are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to racial equality. Any such declaration made by the House of Bishops must be laid

before the General Synod. If 25 members of the Synod give notice that they wish the declaration to be debated, it cannot come into force until it has been approved by the Synod (i.e. on a formal approval motion carried at a group of sessions). If 25 members do not give notice that they wish the declaration to be debated, it comes into force automatically on the expiry of the period specified for this purpose in the Standing Orders of the General Synod.

16. The Committee favours this kind of approach. It proposes that codes of practice should be laid before the General Synod. This could be at any time – including between groups of sessions. Then, if 25 members did not give notice within three weeks, the code would come into operation on the expiry of that period. If 25 members did give notice, the code would not come into operation until it had been debated and approved at a group of sessions. **Amendment 5** in Annex A would give effect to this proposal.

Enforcement of requirements in respect of the laity

17. A number of speakers raised the issue that while there are means available to enforce the requirements the code of practice will impose on the clergy (i.e. proceedings under the Clergy Discipline Measure 2003 or, in due course, its replacement), there are no equivalent means of enforcement in respect of the laity who will be subject to requirements under the code of practice.
18. The Committee noted that the Churchwardens Measure 2001 and the Church Representation Rules make some provision for the disqualification of churchwardens and PCC members on safeguarding grounds. A person is disqualified from being a churchwarden or a member of a PCC if that person is included in a barred list under the Safeguarding Vulnerable Groups Act 2006 (SVGA) or has been convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 (CYPA).
19. Separately from the question of disqualification, the bishop has the power, under the Churchwardens Measure and the Church Representation Rules, to suspend a churchwarden or PCC member. The power to suspend in respect of such a person arises if the person is arrested or charged in relation to an offence listed in Schedule 1 to CYPA. It also arises if the bishop is satisfied, on the basis of information provided by a local authority or the police, that the person presents a significant risk of harm in relation to a child or vulnerable adult. Suspension lasts for three months and is renewable. If the matter in relation to which the suspension was imposed is concluded, the suspension comes to an end. In the event that a person is convicted of an offence listed in Schedule 1 to CYPA, or is added to a barred list under SVGA, the person will become disqualified from serving as a churchwarden or PCC member.
20. However, there is no Church process that comes close to mirroring the Clergy Discipline Measure in relation to misconduct by lay officers. All jurisdiction of Church courts over the laity was formally abolished by the Ecclesiastical Jurisdiction Measure 1963. The creation of new machinery for exercising discipline over lay officers of the Church of England would be a major undertaking. It would probably need to involve a similar framework to that which exists in relation to the clergy, involving a preliminary sifting stage, investigation, decision whether there is a case to answer, and a tribunal that would decide questions of fact and law.
21. The Committee did not consider that addressing the general issue of discipline over the laity was within its remit. It involves consideration of a wide range of questions, of law and policy, which go far beyond the scope of this draft

Measure. The draft Measure is intended to give effect to the recommendation made by the Independent Inquiry into Child Sexual Abuse that the current duty to have due regard to guidance be replaced.

22. The Committee did, however, take the view that some provision for enforcement of the duty to comply with the code of practice should be made where no other means of enforcement currently existed. The Committee accordingly considered the list of ‘relevant persons’ in the new section 5A (to be inserted by clause 1 of the draft Measure). The Committee noted that means of enforcement already exist in respect of the clergy (under the Clergy Discipline Measure 2003), lay persons who are licensed to exercise ministry (under the relevant Canons), parochial church councils, diocesan boards of education, diocesan boards of finance, other diocesan bodies and bodies established to carry out mission initiatives (under the Charities Act 2011), cathedrals (by visitation), staff (under their employment contracts) and volunteers (by removing them from a role). The only relevant persons in respect of whom there are currently no means of enforcing their compliance with safeguarding responsibilities are churchwardens.
23. The Committee considered that the existing power of the bishop to suspend a churchwarden on safeguarding grounds (see above) should be extended to include the case where a churchwarden fails to comply with a requirement imposed upon churchwardens by the safeguarding code. By extending the bishop’s existing power of suspension in this way, a churchwarden who was suspended for non-compliance would have a right of appeal to the President of Tribunals (as he or she currently has if suspended on either of the existing two grounds – see above). **Amendment 6** in Annex A would give effect to this proposal.

‘Relevant persons’

24. One member had suggested that **religious communities** should be brought within the list of ‘relevant persons’ – i.e. those individuals and bodies on whom the code of practice can impose requirements.
25. Following the making of the Religious Communities Regulations 2020, religious communities in the Church of England must include provision in their constitutions which require their members and other persons exercising functions under their constitutions to comply with House of Bishops safeguarding requirements. The effect, therefore, is that religious communities are already in the same position with regard to safeguarding requirements as the relevant persons who are listed in the new section 5A.
26. The Committee considered that the question was therefore a presentational one. Was it necessary to change the position so that obligations which are currently imposed indirectly on religious communities through their constitutions are imposed directly by Measure? The Committee considered that it was not necessary or desirable to do so. The matter had already been addressed in legislation passed by the Synod last year (i.e. the Religious Communities Regulations 2020). That legislation operates in a way that takes account of the many different ways in which individual religious communities are constituted. That position could not be replicated simply by adding religious communities to the list of relevant persons. The Committee therefore considered that the safeguarding requirements applying to religious communities should continue to be dealt with by the 2020 Regulations and do not propose an amendment to the draft Measure in that regard.
27. Another member had suggested that **ordinands** ought to be included as ‘relevant persons’. The Committee noted that that would involve creating a statutory

definition of 'ordinand' for this purpose, as the term 'ordinand' does not have a clearly established meaning. A further consideration is that Theological Training Institutions are not part of the structure of the Church of England. They have their own safeguarding policies – in some cases, policies which they are required to adopt by the university with which they are associated. Making theological training institutions relevant persons could result in conflict between those safeguarding policies and the code of practice. Moreover, it was bishops who conferred the status of ordinand on individuals by sponsoring them for training. Bishops are relevant persons and bound to comply with the requirements of the code in how they deal with issues relating to ordinands and are able to withdraw their sponsorship of an ordinand if necessary. The Committee accordingly took the view that ordinands should not be added to the list of relevant persons and should, until they are ordained, continue to be subject to the safeguarding policies of the institution at which they are training.

28. One member had raised the question of how **proprietary chapels** fitted into the legislative framework. The Committee was advised that a proprietary chapel – as the name suggests – is a chapel that is privately owned, either by an individual or trustees, in which the services of the Church of England are publicly performed by a licensed minister. Proprietary chapels are not part of the diocesan or parochial structure of the Church of England but are essentially private enterprises. Unless the chapel is situated in an extra-parochial place, the minister of a proprietary chapel requires permission from the incumbent of the parish in which the chapel is situated to perform the services of the Church of England in the chapel. This is in addition to the requirement that the minister be licensed by the bishop of the diocese.
29. The minister of a proprietary chapel would be a 'relevant person' under the new section 5A(2)(a) (clerk in holy orders authorised to officiate in accordance with the Canons). But none of the bodies included in section 5A(2) exist in relation to a proprietary chapel: for example, there is no PCC. There will not necessarily be any body of persons responsible for a proprietary chapel, as the proprietor could be an individual. But if the chapel is held by trustees, they may or may not have duties in relation to the chapel beyond the mere ownership and upkeep of the building. Whether they have, and the extent of any such duties, will depend on the terms of the trust deed for the particular chapel. That being so, the Committee did not consider that the definition of 'relevant person' could, in practical terms, be applied to proprietary chapels beyond the extent that it already applies to the minister. However, bishops are relevant persons and may refuse to grant a licence to a minister to serve a proprietary chapel if not satisfied that safeguarding of children and vulnerable adults is being properly carried out there.
30. A member had suggested that the list of 'relevant persons' should be capable of being amended by **secondary legislation** (i.e. by order rather than by Measure). The Committee considered that there was merit in this suggestion as it would enable the Church to respond to changes in practice and organisation that occur over time using a proportionate legislative process. **Amendment 3** in Annex A would give effect to this proposal. **Amendment 7** is a consequential amendment.

Legal status of guidance contained in code

31. Subsections (3) and (4) of the new section 5A provide:

- (3) The code may impose requirements on, and give guidance to, relevant persons.

(4) A relevant person must, accordingly, comply with a requirement imposed on that person by the code.

The code will, therefore, not only impose requirements on a relevant person, but will also give guidance to relevant persons.

32. A member has suggested that this could leave relevant persons free to ignore the guidance and has asked whether section 5A should contain a requirement to “consider” the guidance.

33. The duty to comply with requirements in the code is intended to replace the current duty to have due regard to the House of Bishops’ guidance. The guidance in the code will be there to provide practical help with how to comply with the requirements and will not have any separate function of its own. It is possible that ignoring the guidance might itself form part of the evidence to support a case of non-compliance with a requirement. But it does not seem necessary to impose any kind of duty in relation to the guidance specifically. (A duty to “consider” might well meet the same kind of bafflement as the current duty to have due regard.)

34. However, the Committee considered that it would be helpful for the relationship between the requirements and the guidance to be drawn out more clearly. The Committee accordingly proposes an amendment to recast the new 5A(3) to say that the code may impose requirements on relevant persons and may give guidance for relevant persons on compliance with those requirements. **Amendment 1** in Annex A would give effect to this proposal.

Conclusion

35. The Committee hopes that the Synod finds these responses helpful and that members will be able to consider them in advance of the Revision Stage at the April group of sessions.

Morag Ellis

Chair of the Steering Committee

December 2020

ANNEX A

AMENDMENTS PROPOSED BY STEERING COMMITTEE

1. Clause 1, page 1, line 34, leave out “, and give guidance to, relevant persons” and insert “relevant persons and may give guidance to relevant persons on compliance with those requirements”.

Explanatory statement

This is a drafting amendment to subsection (3) of the proposed new section 5A to be inserted in the Safeguarding and Clergy Discipline Measure 2016. The amendment would clarify that the guidance included in the Code of Practice will be guidance on how to comply with the requirements imposed by the Code. Annex B shows how the text of section 5A(3) would look if this amendment were made.

2. Clause 1, page 2, line 10, after “each” insert “or any”.

Explanatory statement

This is a drafting amendment to subsection (7) of the proposed new section 5A to be inserted in the Safeguarding and Clergy Discipline Measure 2016. It would ensure that, where there are separate Codes of Practice for different matters, statutory references to “the code” would be read as including any or all of those separate codes as appropriate, depending on the context. Annex B shows how the text of section 5A(7) would look if this amendment were made.

3. Clause 1, page 2, line 20, after “section.”” insert—

“(9) The Archbishops’ Council may by order amend this section so as to add, vary or omit a reference to a relevant person; and section 6 applies to an order under this section as it applies to an order under that section.”

Explanatory statement

This would insert a new subsection (9) in the proposed new section 5A to be inserted in the Safeguarding and Clergy Discipline Measure 2016. It would give the Archbishops’ Council a power to amend by secondary legislation the list of “relevant persons” in subsection (2) of the new section 5A.

The reference in this amendment to “section 6” is to section 6 of the 2016 Measure (which gives a power to amend by secondary legislation the definition of “vulnerable adult”) and the purpose of that reference here is to apply the procedural requirements in that section. Therefore, an order to amend the list of “relevant persons” would be subject to approval by the General Synod and members of Synod would have the right to propose amendments.

Annex B shows how the new section 5A would look if this amendment were made.

4. Clause 1, page 2, line 20, after “section.”” insert—

“5B Code of Practice: consultation

- (1) Before issuing or revising the code under section 5A, the House of Bishops must be satisfied that sufficient and appropriate consultation has been carried out.
- (2) In deciding whether it is satisfied for the purposes of subsection (1), the House of Bishops must, in particular, assess whether and, if so, to what extent it would be appropriate to consult the following—

- (a) persons, or groups of persons, who have suffered violence, abuse, neglect or exploitation in a setting or relationship to which the code applies;
- (b) the president or deputy president of tribunals;
- (c) the Standing Committee of the House of Clergy;
- (d) the Standing Committee of the House of Laity.”

Explanatory statement

This would insert a new section 5B in the Safeguarding and Clergy Discipline Measure 2016. It would require that the House of Bishops must be satisfied that “sufficient and appropriate” consultation has taken place before it issues or revises the Code or any separate Codes.

In practice, the consultation would be undertaken by the National Safeguarding Team (NST), who would decide whom to consult, depending on the matters to which the consultation relates. The list in paragraphs (a) to (d) is not exhaustive or obligatory. But to the extent that the consultees in any given case did not include the persons listed in paragraphs (a) to (d), the NST would have to be ready to explain why to the House of Bishops.

On the list itself, the wording in paragraph (a) is based on the definition of “vulnerable adult” in section 6 of the 2016 Measure. On paragraph (b), it is thought that the president of tribunals (or, in her absence, her deputy) would have a good overall view of recent complaints and therefore the extent to which the matters being consulted on would in practice affect complainants and respondents. On paragraphs (c) and (d), the Standing Committee of each House would be well-placed to assess the implications for potential complainants and respondents.

Annex B shows how clause 1 would look if this amendment were made.

5. Clause 1, page 2, line 20, after “section.”” insert—

“5C Code of Practice: scrutiny and commencement

(1) The code under section 5A does not come into operation unless and until—

- (a) the Clerk to the General Synod, on the instructions of the House of Bishops, has caused the code to be published on the Church of England website and has sent a copy of the code to each member of the General Synod, and
- (b) the code has been approved by the General Synod.

(2) If, before the end of the period of three weeks beginning with the date on which the Clerk to the General Synod has complied with subsection (1)(a), 25 members of the General Synod have not given notice in writing to the Clerk that they wish the code to be debated, the code is to be treated for the purposes of subsection (1)(b) as having been approved by the General Synod at the end of that period.

(3) If, before the end of that period, 25 members of the General Synod have given notice of the kind mentioned in subsection (2)—

- (a) the Clerk to the General Synod must inform the Business Committee, and
- (b) the Business Committee must secure that a debate on a motion for approval of the code is held at the next group of sessions.

- (4) In subsection (3), “the Business Committee” means the Committee of the General Synod appointed in accordance with section 10 of the National Institutions Measure 1998.
- (5) A reference in this section to the code under section 5A includes a reference to a revision of the code.”

Explanatory statement

This would insert a new section 5C in the Safeguarding and Clergy Discipline Measure 2016. It would provide that the Code does not come into force unless it has been published on the Church of England website, sent to all members of the General Synod and approved by the Synod. The Code would be deemed to be approved by the Synod unless 25 members were to give notice to the Clerk that they wished it to be debated. Annex B shows how clause 1 would look if this amendment were made.

6. Clause 1, page 2, line 20, at end insert—

- “(2) In section 6A of the Churchwardens Measure 2001 (suspension), in subsection (1), after paragraph (b) insert “, or
 - (c) the bishop is satisfied that a churchwarden has failed to comply with a requirement imposed by the code under section 5A of the Safeguarding and Clergy Discipline Measure 2016”.
- (3) In that section, in each of subsections (5), (8) and (9), after “(1)(b)”, in each place it appears, insert “or (c)”.

Explanatory statement

This would insert two new subsections at the end of clause 1. As a result, the existing text of clause 1 would become subsection (1) and these two new subsections (2) and (3) would follow it.

The proposed new subsection (2) would amend section 6A of the Churchwardens Measure 2001 to provide that failure by a churchwarden to comply with the Code would be grounds on which the bishop could suspend that churchwarden from office. Amending section 6A of the Churchwardens Measure 2001 means that the appeal provisions in section 6B would automatically apply – therefore, a churchwarden suspended for failing to comply with the Code would have a right of appeal to the president of tribunals.

The proposed new subsection (3) makes necessary consequential amendments to section 6A of the Churchwardens Measure 2001.

Annex C shows how section 6A(3) of the Churchwardens Measure 2001 would look if this amendment were made.

7. Clause 2, page 2, line 23, at end insert—

- “(1A) In section 6(3) of that Measure (power to amend definition of “vulnerable adult”), after ““vulnerable adult”” insert “and, in consequence of an amendment to that definition, amend any other provision of this Measure”.

Explanatory statement

This is consequential on amendment 4. It would amend section 6 of the Safeguarding and Clergy Discipline Measure 2016. It would provide that, if the definition of “vulnerable adult” were to be amended under the order-making power in section 6, the terminology used in the proposed new section 5B(2)(a) (which is based on the definition of “vulnerable adult”) could be amended in an equivalent way to ensure consistency.

ANNEX B
MARKED-UP TEXT OF CLAUSE 1 OF DRAFT MEASURE

The text below is a marked-up version of clause 1 of the Safeguarding (Code of Practice) Measure to show how it would look if it were to be amended as proposed by the Steering Committee. Proposed new text is shown in bold.

1 Code of Practice

(1) After section 5 of the Safeguarding and Clergy Discipline Measure 2016 insert—

“5A Code of Practice

- (1) The House of Bishops must issue, and may from time to time revise, a code of practice for relevant persons on safeguarding children and vulnerable adults.
- (2) Each of the following is a relevant person—
 - (a) a clerk in Holy Orders who is authorised to officiate in accordance with the Canons,
 - (b) an archbishop;
 - (c) a diocesan, suffragan or assistant bishop;
 - (d) an archdeacon;
 - (e) a person who is licensed to exercise the office of reader or serve as a lay worker;
 - (f) a churchwarden;
 - (g) a parochial church council;
 - (h) the Chapter of a cathedral;
 - (i) the Diocesan Board of Education for a diocese (see subsection (8));
 - (j) the Diocesan Board of Finance for a diocese;
 - (k) any other diocesan body as defined by section 19(1) of the Dioceses, Pastoral and Mission Measure 2007;
 - (l) a body established to carry out a mission initiative as defined by section 80(1) of the Mission and Pastoral Measure 2011;
 - (m) a person who is an officer or member of staff of the Archbishops’ Council, or who provides services to the Archbishops’ Council, and whose work to any extent relates to safeguarding children and vulnerable adults;
 - (n) a person who works (on any basis) in a diocese or parish, or at a cathedral or for the purposes of a mission initiative, and whose work to any extent relates to safeguarding children and vulnerable adults.
- (3) The code may impose requirements, ~~and give guidance to relevant persons~~ **on relevant persons and may give guidance to relevant persons on compliance with those requirements.**
- (4) A relevant person must, accordingly, comply with a requirement imposed on that person by the code.
- (5) The code may specify exceptions to any requirement it imposes.
- (6) The code may also authorise a person of a specified description to make an exception, in the case of a particular relevant person, to a requirement imposed by the code; and the

relevant person in question may rely on that exception as if it were specified in the code.

- (7) The House of Bishops may, for the purposes of subsection (1), issue and revise separate codes for different matters; and, where there are separate codes, a reference in this or any other Measure, or in an instrument made under a Measure, to the code under this Measure is to be read as a reference to each **or any** of those codes.
- (8) The reference in subsection (2)(i) to the Diocesan Board of Education for a diocese is a reference—
- (a) where the Board is a company or charitable incorporated organisation, to the Board itself;
 - (b) where the Board is an unincorporated body, to a member of the Board;
 - (c) where the Diocesan Board of Finance for the diocese is designated as the Diocesan Board of Education under section 3 of the Diocesan Boards of Education Measure 2021, to a member of the committee established by virtue of that section.
- (9) The Archbishops' Council may by order amend this section so as to add, vary or omit a reference to a relevant person; and section 6 applies to an order under this section as it applies to an order under that section.**

5B Code of Practice: consultation

- (1) Before issuing or revising the code under section 5A, the House of Bishops must be satisfied that sufficient and appropriate consultation has been carried out.**
- (2) In deciding whether it is satisfied for the purposes of subsection (1), the House of Bishops must, in particular, assess whether and, if so, to what extent it would be appropriate to consult the following—**
- (a) persons, or groups of persons, who have suffered violence, abuse, neglect or exploitation in a setting or relationship to which the code applies;**
 - (b) the president or deputy president of tribunals;**
 - (c) the Standing Committee of the House of Clergy;**
 - (d) the Standing Committee of the House of Laity.**

5C Code of Practice: scrutiny and commencement

- (1) The code under section 5A does not come into operation unless and until—**
- (a) the Clerk to the General Synod, on the instructions of the House of Bishops, has caused the code to be published on the Church of England website and has sent a copy of the code to each member of the General Synod, and**
 - (b) the code has been approved by the General Synod.**
- (2) If, before the end of the period of three weeks beginning with the date on which the Clerk to the General Synod has complied with subsection (1)(a), 25 members of the General Synod have not given notice in writing to the Clerk that they wish the code to be debated, the code is to be treated for the purposes of subsection (1)(b) as having been approved by the General Synod at the end of that period.**
- (3) If, before the end of that period, 25 members of the General Synod have given notice of the kind mentioned in subsection (2)—**
- (a) the Clerk to the General Synod must inform the Business Committee, and**

- (b) the Business Committee must secure that a debate on a motion for approval of the code is held at the next group of sessions.**
- (4) In subsection (3), “the Business Committee” means the Committee of the General Synod appointed in accordance with section 10 of the National Institutions Measure 1998.**
- (5) A reference in this section to the code under section 5A includes a reference to a revision of the code.”**
- (2) In section 6A of the Churchwardens Measure 2001 (suspension), in subsection (1), after paragraph (b) insert “, or**
- (c) the bishop is satisfied that a churchwarden has failed to comply with a requirement imposed by the code under section 5A of the Safeguarding and Clergy Discipline Measure 2016”.**
- (3) In that section, in each of subsections (5), (8) and (9), after “(1)(b)”, in each place it appears, insert “or (c)”.**

ANNEX C
MARKED-UP TEXT OF SECTION 6A OF CHURCHWARDENS MEASURE 2001

The text below is a marked-up version of section 6A(1) of the Churchwardens Measure 2001, showing how it would look if it were amended as proposed by the Steering Committee. Subsections (2) and (3) of section 6, and section 6B of that Measure, are shown for context. Proposed new text is shown in bold.

6A Suspension

- (1) This section applies where—
- (a) a churchwarden is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 or is charged with such an offence without being arrested, or
 - (b) the bishop is satisfied, on the basis of information provided by a local authority or the police, that a churchwarden presents a significant risk of harm, **or**
 - (c) **the bishop is satisfied that a churchwarden has failed to comply with a requirement imposed by the code under section 5A of the Safeguarding and Clergy Discipline Measure 2016.**
- (2) The bishop may suspend the person from the office of churchwarden by serving written notice on the person; and the notice must specify the bishop's reasons for imposing the suspension.
- (3) The bishop may at any time revoke a suspension under this section by serving written notice on the person.
- (4) – (13) ...

6B Appeal against suspension under section 6A

- (1) A person on whom a notice of suspension is served under section 6A(2) may appeal against the suspension to the president of tribunals.
- (2) On an appeal under this section, the president of tribunals may, within 28 days following the lodging of the appeal, either confirm or revoke the suspension.