

2021 No. 557

ECCLESIASTICAL LAW, ENGLAND

The Clergy Discipline (Amendment) Rules 2021

<i>Made (approved by General Synod)</i>	<i>24th April 2021</i>
<i>Laid before Parliament</i>	<i>13th May 2021</i>
<i>Coming into force - -</i>	<i>13th July 2021</i>

The Rule Committee makes the following Rules in exercise of the powers conferred by sections 83 and 94 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018(a):

Citation, commencement and interpretation

- 1.—(1) These Rules may be cited as the Clergy Discipline (Amendment) Rules 2021.
- (2) These Rules come into force two months after the day on which they are laid before Parliament.
- (3) In these Rules, “the 2005 Rules” means the Clergy Discipline Rules 2005(b); and a reference to a numbered Rule is to the Rule numbered as such in the 2005 Rules.

Provision of email address

- 2.—(1) In Rule 4 (institution of proceedings), in paragraph (2)(a)(ii), after “the complainant” insert “and, if the complainant has one, an email address”.
- (2) In Rule 17(c) (respondent’s answer), in paragraph (2)(a), after “the respondent” insert “and, if the respondent has one, an email address”.

Timeline

3. In Rule 4 (institution of proceedings), in paragraph (2), after sub-paragraph (a), insert—
- “(aa) be accompanied by a statement of the relevant events in chronological sequence”.

Limitation period

4. In Rule 8(d) (allegation made out of time), for paragraphs (2) to (4) substitute—
- “(2) The President shall start consultation by giving the respondent a copy of the complainant’s application and written directions for the management of the application, and shall invite the respondent to make written comments to the President in response to the

(a) 2018 No. 3.
(b) S.I. 2005/2022, as amended by S.I. 2013/1917 and S.I. 2016/848.
(c) Relevant amendments have been made by rule 5 of S.I. 2016/848.
(d) Relevant amendments have been made by rule 4 of S.I. 2013/1917.

application within 21 days of receiving the copy of the application and the directions; and any such comments must be made in accordance with those directions.

(3) The President shall, within 7 days of receiving comments from the respondent under paragraph (2), give the complainant a copy of the comments and written directions for the management of the application.

(4) When acting under paragraph (3), the President shall inform the complainant that, within 21 days of receiving the copy of the comments and the directions, the complainant may send the President written comments in reply; and any such comments must be made in accordance with those directions.”

Production of documents by person not party to proceedings

5.—(1) After Rule 28 insert—

“Application for production of documents by person not party to proceedings

28A.—(1) The Designated Officer or the respondent may apply to the President for an order for production of documents by a person who is not a party to the allegation of misconduct.

(2) But the respondent may not apply for production of documents by the Designated Officer.

(3) The application must be made in writing using form 10a in the Schedule.

(4) The application must be made—

- (a) after the allegation of misconduct is referred to the Designated Officer under rule 28, but
- (b) before the President decides under rule 29 whether there is a case for the respondent to answer.

(5) The application may be made without notice being given to any person but the President may direct under rule 102A that written notice of the application be given to one or more specified persons.

(6) The President may make an order under this rule only where it appears to the President that the production of documents specified or described in the application is relevant and necessary for dealing fairly with the allegation.

(7) An order under this rule must specify or describe the documents or the classes of documents which the person to whom the order is directed must produce.

(8) An order under this rule must state—

- (a) that the person to whom the order is directed must obey the order, and
- (b) failure to do so may be a contempt, and
- (c) that the person to whom the order is directed may be sent to a prison or fine, or both, if the order is not obeyed.

(9) Where an order under this rule is made without reasonable notice of the application having been given to the person to whom the order is directed, that person may apply to the President for discharge or variation of the order within the period specified in the order; and that period must be no less than 14 days after the date of the order.

(10) A failure to comply without a reasonable excuse with an order under this rule is to be treated as a contempt to which rule 105 applies; and the President accordingly has the power to give a certificate under that rule for the purposes of this rule.”

(2) In rule 105 (contempt), in paragraph (1), for “section 81(3) of the Ecclesiastical Jurisdiction Measure 1963” substitute “section 25(3) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018”.

(3) In the Schedule to the 2005 Rules, after form 10 insert the form 10a set out in Schedule 1 to these Rules.

(4) In the title to Part 4 of the 2005 Rules, at the end insert “, etc.”.

Cross-examination of witnesses

6.—(1) After Rule 45 insert—

“Cross-examination of witnesses in person

45A.—(1) A respondent may not cross-examine a witness in person where the alleged misconduct is—

- (a) conduct of a sexual nature towards the witness, or
- (b) conduct towards the witness which took place when the witness was a child.

(2) A respondent may not cross-examine a witness in person where it appears to the tribunal—

- (a) that the quality of evidence given by the witness would be likely to be diminished if the cross-examination were conducted by the respondent in person and would be likely to be improved if a direction under this Rule were to be given, and
- (b) that it would not be contrary to the interests of justice to give such a direction.

(3) The Designated Officer may apply in writing to the Chair using form 8 in the Schedule for a direction that paragraph (2) applies in relation to the witness specified in the application; and the Designated Officer must send or deliver a copy of the application to the respondent at the same time as the application is made to the Chair.

(4) The respondent may, within 14 days of receiving a copy of an application under paragraph (3), make representations in writing to the Chair using form 9 in the Schedule; and the respondent must send or deliver a copy of the representations to the Designated Officer at the same time as the representations are made to the Chair.

(5) In determining an application under paragraph (3), the Chair must have regard to—

- (a) any views expressed by the witness as to whether the witness is content to be cross-examined by the respondent in person,
- (b) the nature of the questions likely to be asked, in light of the issues in the proceedings,
- (c) whether there has been any relationship between the witness and the respondent and, if so, the nature of that relationship, and
- (d) any other relevant circumstances.

(6) Where the Chair is satisfied that paragraph (1)(a) or (b) or (2) applies in relation to a witness, the Chair must—

- (a) give a direction to that effect,
- (b) invite the respondent to arrange for a legal representative to act for the purpose of cross-examining the witness in question, and
- (c) give a direction that the respondent must notify the Registrar of Tribunals by the end of the period specified in the direction whether a legal representative is to act for the respondent by cross-examining the witness in question.

(7) If, by the end of the period specified under paragraph (6)(c), the respondent has not given the notification to the Registrar of Tribunals—

- (a) the Chair must consider whether it is in the interests of justice for the witness to be cross-examined, and
- (b) if the Chair considers that it is, the tribunal must appoint a legal representative to cross-examine the witness.

(8) A person appointed under paragraph (7)(b) is appointed to act in the interests of the respondent but is not responsible to the respondent.”

(2) In the Schedule to the 2005 Rules, in the heading for each of forms 8 and 9, for “(Rule 31)” substitute “(Rules 31 and 45A)”.

Renaming “complaints” as “allegations of misconduct”

7.—(1) Schedule 2 (which replaces references in the 2005 Rules to complaints with references to allegations of misconduct) has effect.

(2) In each of the forms in the Schedule to the 2005 Rules, for each reference to a complaint substitute a reference to an allegation of misconduct.

(3) In Rule 106 (interpretation), before the definition of “bishop” insert—

““allegation of misconduct” has the same meaning as “complaint” has in the Measure;”.

Online facility for processing allegations

8.—(1) In Rule 101 (sending or delivering documents), after paragraph (1) insert—

“(1A) Where a direction is in force under paragraph (1)(d) for the use of an online facility for processing allegations of misconduct in accordance with these Rules, a document is to be regarded as sent or delivered for the purposes of these Rules if the procedure provided by the online facility for sending or delivering the document is followed.”

(2) In that Rule, in paragraph (1), after “required” insert “or permitted”.

(3) In Rule 9 (receipt of allegation), in paragraph (2)—

(a) for “7 days” substitute “one business day”, and

(b) at the end insert “; but this requirement does not apply in a case where an online facility of the kind mentioned in Rule 101(1A) is being used.”

Service of documents

9. After Rule 101 insert—

“Deemed service

101A. A document sent or delivered in accordance with these Rules by a method specified in the first column of the following table is deemed to be received on the day specified in the second column—

<i>Method</i>	<i>Deemed date</i>
First class post	The second day after the document was posted or left with, delivered to or collected by the relevant service provider or, if that second day is not a business day, the next business day after that second day.
Delivery to or leaving at proper address	If the document is delivered or left before 4.30pm on a business day, that day, or in any other case, the next business day.
Document exchange	The second day after the document was left with, delivered to or collected by the relevant service provider or, if that second day is not a business day, the next business day after that second day.
Electronic means (where directed under Rule 101(1)(d))	If the document is sent before 4.30pm on a business day, that day, or in any other case, the next business day.”

Word and page limits

10. After Rule 101A (inserted by Rule 8 of these Rules) insert—

“Word and page limits

101B.—(1) In the case of each form in the Schedule specified in the first column of the following table, the number of words which may be used in the section of that form for the subject matter specified in the second column must not exceed 3000—

<i>Form</i>	<i>Subject matter</i>
1a (allegation about priest or deacon)	The misconduct complained of
1b (allegation about bishop or archbishop)	The misconduct complained of
1c (application to make allegation out of time)	The reasons for not making the allegation in time
1d (allegation about cathedral clerk)	The misconduct complained of
1e (allegation about chaplain in institution)	The misconduct complained of
1f (allegation about armed forces chaplain)	The misconduct complained of
1g (allegation about minister with licence to preach in province or with licence from Oxford or Cambridge University)	The misconduct complained of
2 (respondent’s answer to allegation)	The summary of the respondent’s version of events
3 (statement in support of allegation or answer)	The statement
4 (request to review dismissal of allegation)	The reasons why the dismissal of the allegation is believed to be wrong
5 (referral to consider determination for no further action)	The reasons why the determination that there be no further action is believed to be wrong
8 (notice of application to Registrar)	The order applied for and the reasons for applying for it (taken together)
9 (response to allegation to Registrar)	The reasons for the response given
10a (application for disclosure by non-party)	The order applied for and the reasons

(2) In the case of each provision specified in the first column of the following table, the number of words which may be used for the purpose specified in the second column must not exceed 3000—

<i>Provision</i>	<i>Purpose</i>
Rule 14A (allegations of sexual misconduct towards vulnerable child)	Making written representations under paragraph (3)
Rule 66 (appeal by priest or deacon against notice of suspension)	Setting out grounds of appeal under paragraph (2)
Rule 75 (inclusion of name in list under section 38(1)(a) to (dd) of the Measure)	Making a written request for a review under paragraph (2)
Section 37 of the Measure (suspension of archbishop or bishop)	Making an appeal by virtue of section 37(6) of the Measure

(3) In the case of each form in the Schedule which allows attachments to be made to the form, the number of pages attached must not exceed 25 pages of A4 size in a legible form.

(4) Where the words used for the purposes of paragraph (1) or (2) include a link to a webpage, the number of words contained in the webpage count towards the word limit of 3000.

(5) Where an attachment of the kind referred to in paragraph (3) includes a link to a webpage, the number of A4 pages which would be used if the webpage were to be printed in legible form counts towards the page limit of 25.

(6) The relevant officer may disapply or increase the word limit under paragraph (1) or (2) or the page limit under paragraph (3), if, on application made by the person to whom the

limit applies, the relevant officer is satisfied that there are exceptional circumstances which justify doing so.

(7) In paragraph (6), “relevant officer” means—

- (a) in the case of a form making or answering an allegation of misconduct or any attachments to it, the bishop, and
- (b) in any other case, the President.”

Powers of the President

11. In Rule 102A(a), which is to be given the title “Powers of the President”, after paragraph (1) insert—

“(1A) The President may, on the President’s own initiative, give directions for the just disposal of an application, appeal or request in accordance with the overriding objective.”

Amendments to allegations of misconduct

12. After Rule 103 insert—

“Amendments to allegations

103A.—(1) At any time after the referral of an allegation of misconduct and before the commencement of the hearing of the allegation, the Registrar of Tribunals may, on an application in writing, direct that the allegation be amended.

(2) At any time after the commencement of the hearing of the allegation and before the pronouncement of the determination, the Chair may, on an application made orally, direct that the allegation be amended.

(3) A direction under paragraph (1) or (2) may be given only if the Registrar of Tribunals or (as the case may be) the Chair is satisfied that the amendment—

- (a) is necessary for the just disposal of the proceedings in accordance with the overriding objective,
- (b) meets the circumstances of the case, and
- (c) can be made without injustice to the complainant or the respondent.”

Use of statutory forms

13.—(1) In each of Rules 4(1), 82(1), 92(a), 93(a), 94(a), 95(a) and 96(a), omit the words from “, or in a document” to the end.

(2) In Rule 6(2), omit “or in a document which is substantially to the same effect,”.

(3) In Rule 8(1), omit the words from “or in a document” to “of form 1c,”.

(4) In each of Rules 16(1)(a) and 17(4), omit “or in a document which is substantially to the like effect,”.

(5) In Rule 17(2), omit the words from “, or in a document” to “of form 2,”.

(6) In each of Rules 21(2)(a), 23(a) and 27(4) omit “or in a document which is substantially to the like effect”.

(7) In each of Rules 34(2), 34(5), 61(2), 61A(2), 61B(2), 61C(3) and 61D(3), omit “or in a form which is substantially to the like effect,”.

(8) In each of Rules 60(2) and 86(a), omit “or in a form which is substantially to the like effect”.

(9) In each of Rules 85(a), 86A(a), 86B(a), 86C(a) and 86D(a), omit “or in a form which is substantially to the same effect”.

(a) Inserted by S.I. 2013/1917.

Minor corrections

14. In the 2005 Rules—

- (a) for “sub-rule”, in each place it appears, substitute “paragraph”, and
- (b) for “sub-rules”, in each place it appears, substitute “paragraphs”.

M Ellis
C J Angus
R Arlow
T J Briden
S Butler
L M Connacher
A Dawtry
J P Dziegiel
+ A Guildford
V J H Rees
+ A St Albans

This Order was approved by the General Synod on 24th April 2021.

J Philips
Clerk to the General Synod

FORM OF APPLICATION FOR PRODUCTION OF DOCUMENTS
BY NON-PARTY

FORM 10a (Rule 28A)

Clergy Discipline Measure 2003

**Application for the production of a document
by a person not party to the proceedings**

To the President of the Tribunals

In the matter of the complaint

*Enter the
complainant's name.*

made by

*Enter the
respondent's name.*

against

**Delete if
inapplicable.*

**I wish to apply for an order against the following person or persons
that they produce the documents specified or described in the
Appendix**

*List the non-party or
who has possession
or control of the
required documents.
Include their name
and address.*

- 1.
- 2.
- 3.
- 4.

for the following reasons:

*State your reasons
for applying
including why the
documents are
relevant and
necessary for
dealing fairly with
the case.*

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

*Enter your own
 address and
 postcode.
 Enter your details
 here as applicable.*

My address including postcode is:

My telephone no. is.....

My DX no. is.....

My e-mail address is.....

Signed:

Dated:

Capacity:

Specify or describe the relevant documents.

APPENDIX

SCHEDULE 2

Rule 7(1)

REPLACING REFERENCES TO “COMPLAINTS”

In each provision of the 2005 Rules referred to in the first column of the following table, for the wording specified in the second column, substitute the wording in the third column—

<i>Provision</i>	<i>Current wording</i>	<i>New wording</i>
Rule 1(b)	“complaint”	“allegation of misconduct”
Rule 4(1), (3) and (5)(b) (in the first place)		
Rule 6(5)(b)		
Rule 7(1) (in the first place), (2) (in the first place), (3) (in the first place) and (4)		
Rule 9(1A) (in the second place) and (2) (in the first place)		
Rule 10(1) (in the first place), (3) and (4) (in each place)		
Rule 11 (in the first place)		
Rule 12(1) (in the first place) and (2)		
Rule 13(1)		
Rule 14(1)		
Rule 14A(1) (in the first place), (6) and (8)		
Rule 16(1)(c) and (4)(b) and (c)		
Rule 17(1) (in the first place)		
Rule 20(b)		
Rule 21(1) and (2)(c)		
Rule 22(b)		
Rule 23		
Rule 24(b) and (c) (in the first and second places)		
Rule 25(1)(b) and (c)		
Rule 26(3) and (9)		
Rule 27(1), (8) and (9)(a) (in the first place) and (b)		
Rule 28(1) (in each place), (2), (3) and (5)		
Rule 33(1)(a), (c) and (i) and (2)		
Rule 34(2)(a)(i) and (5)(a)		
Rule 35(4)		
Rule 37(1) and (3)		
Rule 38(1) and (2)		
Rule 39(a)		
Rule 43		
Rule 50(1) and (2) (in the first place)		
Rule 55(1)(c) and (2) (in each place)		
Rule 56(1) (in each place), (2) and (3)		
Rule 57		
Rule 59(1)(a) and (b) and (2)		
Rule 61D(2)(b)		
Rule 82(1) and (2)		

Rule 83(1)(b)
 Rule 92(a) and (c) (in the second place)
 Rule 93(a)
 Rule 94(a), (b) (in the second place) and
 (e)(ii),
 Rule 95(a) and (e)(ii)
 Rule 96(a) and (e)(ii)
 Rule 106, in the definition of “Chair”
 and of “Designated Officer”.

Rule 4(2)(a)(i), (iii) and (iv) and (c) and “complaint” “allegation”
 (5)(b) (in the second place)
 Rule 7(1) (in the second place), (2) (in
 the second place) and (3) (in the second
 place)
 Rule 8(5) (in the second place)
 Title to Rule 9
 Rule 9(1) (in each place other than the
 first place), (1A) and (2) (in the second
 place)
 Title to Rule 10
 Rule 10(1) (in each place other than the
 first place) and (2) (in the second place)
 Rule 11 (in the second place)
 Rule 12(1)(a) and (b)
 Rule 14A(1) (in the second and third
 places)
 Title to Rule 15
 Rule 17(1)(a) and (d)
 Title to Rule 18
 Rule 24(c) (in the third place)
 Rule 27(9)(a) (in the second place)
 Title to Part 5
 Title to Rule 38
 Title to Rule 50
 Rule 59(4)(a)
 Title to Rule 83

Rule 14(3) (in the first place) “complaints” “allegations of misconduct”
 Rule 33(1)(j) and (k)

Title to Rule 14 “complaints” “allegations”
 Rule 14(1) and (3) (in the second place)

Rule 4(2) “A complaint” “An allegation of misconduct”
 Rule 82(3)
 Rule 92(d)
 Rule 93(c)
 Rule 94(c)
 Rule 95(c)
 Rule 96(c)

Rule 5	“a complaint”	“an allegation of misconduct”
Rule 6(1)		
Rule 8(1), (5) and (6)		
Rule 9(1) and (1A)		
Rule 10(2)		
Rule 14(2)		
Rule 15(1)		
Rule 19(1)		
Rule 30(1)		
Rule 50(2)		
Rule 52(2A)		
Rule 58(1)		
Rule 59(1) and (4)		
Rule 60(1)		
Rule 81(2)		
Rule 92(c) (in each place)		
Rule 94(b) (in each place)		
Rule 106, in the definition of “complainant”, of “provincial registrar” and of “registrar” (in each place)		
Title to Rule 8	“Complaint”	“Allegation”
Title to Rule 14A	“Complaints”	“Allegations”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules are made under sections 83 and 94 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 and make amendments to the Clergy Discipline Rules 2005 (S.I. 2005/2022).

Rule 2 requires an allegation of misconduct to include the complainant's email address if he or she has one and makes corresponding provision for the respondent's answer.

Rule 3 requires the allegation of misconduct to be accompanied by a timeline of relevant events.

Rule 4 adjusts the procedure in the case of an allegation of misconduct made out of time.

Rule 5 enables the designated officer or the respondent to apply for an order to require a person who is not a party to the allegation of misconduct to produce the documents specified in the order. The form for making the application is set out in Schedule 1.

Rule 6 prohibits a respondent from cross-examining a witness in person in a case of alleged sexual misconduct or where the witness was a child at the time of the alleged misconduct. It also imposes a prohibition for a case where the tribunal thinks that the quality of evidence would be adversely affected if the respondent undertook the cross-examination in person.

Rule 7 and Schedule 2 replace references in the Rules to "complaints" with references to "allegations of misconduct".

Rule 8 provides that, where there is an online facility for making or responding to allegations of misconduct, a document is to be regarded as delivered if the procedure provided for by the online facility has been followed.

Rule 9 specifies when a document is deemed to be sent or delivered, depending on the method of service used.

Rule 10 imposes word limits and page limits on the information which complainants, respondents and others provide for the purposes of the Rules.

Rule 11 enables the President to give directions in proceedings on his or her own initiative.

Rule 12 provides a procedure for amending allegations of misconduct.

Rule 13 removes various references to forms or documents which are substantially to the same effect as the prescribed forms in the Schedule to the Rules.

Rule 14 replaces references to "sub-rules" with references to the more usual terminology of "paragraphs".

© Crown copyright 2021

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

<http://www.legislation.gov.uk/id/uksi/2021/557>

ISBN 978-0-34-822332-3



9 780348 223323