# **YR EGLWYS YNG NGHYMRU**

**BIL**

**I DDIWYGIO PENNOD IX O GYFANSODDIAD**

**YR EGLWYS YNG NGHYMRU**

**- BIL DIOGELU (ATAL A TRIBIWNLYS DISGYBLU) 2020**

### **MAWRTH 2020**

**(Cadwch y copi hwn, os gwelwch yn dda, ar gyfer cyfarfod y Corff lloywodraethol yn y dyfodol)**

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**THE CHURCH IN WALES**

**BILL TO AMEND CHAPTER IX OF THE CONSTITUTION OF THE**

**CHURCH IN WALES**

**- SAFEGUARDING (SUSPENSION AND DISCIPLINARY TRIBUNAL) - BILL 2020**

#### **MARCH 2020**

**(Please retain this copy for use at future meetings of the Governing Body)**

**BILL TO AMEND CHAPTER IX OF THE CONSTITUTION OF THE CHURCH IN WALES**

WHEREAS the Governing Body of the Church in Wales has resolved that Chapter IX of the Constitution of the Church in Wales shall be amended in manner hereinafter appearing.

BE IT HEREBY ENACTED as follows:

1. For sections 9, 39, 40 and 41 of Chapter IX of the Constitution of the Church in Wales there shall be substituted the text set out in the Schedule to this Canon.
2. A new definition of *“Provincial Safeguarding Panel”* as *“the panel appointed by the Standing Committee to review and advise upon casework relating to the safeguarding of children and adults at risk within the Church in Wales”* be inserted into Section 7 of Chapter I of the Constitution of the Church in Wales.
3. The Canon shall come into force immediately.
4. This Canon shall be known as *The Safeguarding (Suspension and Disciplinary Tribunal) Canon 2020*.

The Schedule before referred to

(The new form of the aforementioned sections of Chapter IX)

9.

There shall be a Disciplinary Tribunal of the Church in Wales which shall have power to hear and determine a complaint, whensoever it arises, of one or more of the following:

(*a*)     teaching, preaching, publishing or professing, doctrine or belief incompatible with that of the Church in Wales;

(*b*)     neglect of the duties of office, or persistent carelessness or gross inefficiency in the discharge of such duties;

(*c*)     conduct giving just cause for scandal or offence;

(*d*)     wilful disobedience to or breach of any of the provisions of the Constitution or of the Statement of Terms of Service published pursuant to the Clergy Terms of Service Canon 2010;

(*e*)     wilful disobedience to or breach of any of the rules and regulations of the Diocesan Conference of the Diocese in which such person holds office or resides;

(*f*)     disobedience to any judgement, sentence or order of the Archbishop, a Diocesan Bishop, the Tribunal, or any Court of the Church in Wales;

(g)    failure to comply with advice from the Provincial Safeguarding Panel without reasonable excuse

made against any of the following who, at the date of the conduct giving rise to the complaint or at the date of the complaint was:

(i)     a Cleric who held a licence granted by a Bishop of the Church in Wales;

(ii)    a Cleric who held Permission to Officiate granted by a Bishop of the Church in Wales;

(iii)    a Cleric in receipt of a pension or entitled to a deferred pension benefit from the Church in Wales;

(iv)    a cleric in receipt of any emolument or other financial benefit from the Church in Wales;

(v)    a person in training for an authorised ministry in the Church in Wales, sponsored for such training by a Bishop of the Church in Wales, and who had agreed in writing to be bound by the provisions of this section;

(vi)   a Churchwarden or Sub-warden who held office in a parish of the Church in Wales;

(vii)   a lay member of the Church in Wales who held a licence, permission to officiate or commission issued by or on behalf of a Bishop of the Church in Wales.

**Part VII: Miscellaneous powers and provisions relating to Diocesan Bishops and the Archbishop’s Registrar**

39.

1. A Diocesan Bishop shall have power to suspend from office, until the hearing and determination of a case, any person holding office in his or her diocese against whom a charge is pending.
2. A Diocesan Bishop shall have the power to suspend from office any person holding office in his or her diocese if the Bishop has been advised to do so by the Provincial Safeguarding Panel.
3. The Archbishop’s Registrar shall have the power to suspend from office any person holding office in the Province if the Archbishop’s Registrar has been advised to do so by the Provincial Safeguarding Panel.
4. Before exercising the power in subsection 3, the Archbishop’s Registrar shall consult:
	1. The Bishop of the relevant Diocese; and
	2. The Archbishop (or, if the Archbishop is the Bishop of the relevant Diocese, the senior Diocesan Bishop).
5. During any suspension:
	1. a Diocesan Bishop; or
	2. (in the case of a suspension of the Diocesan Bishop or the incapacity of the Diocesan Bishop) the Archbishop

shall have power to make arrangements for carrying out the duties of that office during such suspension.

40.

1. A Diocesan Bishop shall have the power to order that a suspended Cleric or deaconess shall not reside in the Parsonage as defined in Chapter VII section 1(*d*) or retain possession of the glebe lands during suspension, and that such Cleric or deaconess shall deliver up all books, keys and other property held by him or her in virtue of office to such person or persons as the Bishop may appoint to have custody thereof for and on behalf of the Diocesan Board of Finance within 14 days.
2. A suspended Cleric or deaconess may appeal an order under subsection (1) to the President of the Provincial Court by giving written notice to the Registrar of the Provincial Court within 14 days of being notified of the said order and if such appeal is made the order of the Bishop shall be stayed until determination of the appeal.

41.

1. It shall be lawful for the Diocesan Bishop, by writing under his or her hand, to order that any stipend otherwise payable to a suspended Cleric or deaconess, or any part of such stipend, shall be sequestered for such period (commencing not less than 14 days after the date of the order) and subject to such conditions as the Bishop may think fit, and the Bishop shall forward a copy of the order to the Secretary of the Diocesan Board of Finance and the Secretary of the Representative Body, who shall (subject to subsection (2)) carry out the terms thereof.
2. A suspended Cleric or deaconess may appeal an order under subsection (1) to the President of the Provincial Court by giving written notice to the Registrar of the Provincial Court within 14 days of being notified of the said order and if such appeal is made the order of the Bishop shall be stayed until determination of the appeal.

**BIL I DDIWYGIO PENNOD IX O GYFANSODDIAD YR EGLWYS YNG NGHYMRU**

GAN FOD Corff Llywodraethol yr Eglwys yng Nghymru wedi penderfynu diwygio Pennod IX o Gyfansoddiad yr Eglwys yng Nghymru yn y modd a ymddengys wedi hyn.

DEDDFIR DRWY HYN fel a ganlyn:

1. Yn lle adrannau 9, 39, 40 a 41 o Bennod IX o Gyfansoddiad yr Eglwys yng Nghymru

 gosoder y testun sydd yn yr Atodlen i’r Canon hwn.

1. Gosod diffiniad newydd o “*Panel Diogelu’r Dalaith”* sef *“y panel a benodir gan y Pwyllgor Sefydlog i adolygu a chynghori ar waith achos sy’n ymwneud â diogelu plant ac oedolion sydd mewn perygl o fewn yr Eglwys yng Nghymru”* yn Adran 7 o Bennod I o Gyfansoddiad yr Eglwys yng Nghymru.
2. Daw’r Canon hwn i rym ar unwaith.
3. Mae’r Canon hwn i’w adnabod fel *Canon Diogelu (Atal a Tribiwnlys Disgyblu) 2020.*

Yr Atodlen flaenorol y cyfeirir ati

(Ffurf newydd adrannau dywededig Pennod IX)

9.

Bydd Tribiwnlys Disgyblu yn yr Eglwys yng Nghymru a fydd â’r awdurdod i wrando ac i ddedfrydu ar achwyniad ynghylch, un neu fwy o’r canlynol pan fydd yn codi:

*(*a) dysgu, pregethu, cyhoeddi neu arddel athrawiaeth neu gred sy’n anghydnaws ag athrawiaeth yr Eglwys yng Nghymru;

(*b*) esgeuluso dyletswyddau swydd, neu ddiofalwch parhaus neu aneffeithlonrwydd llwyr wrth gyflawni’r cyfryw ddyletswyddau;

(*c*) ymddygiad sy’n rhoi achos cyfiawn i gywilydd neu dramgwydd;

(*d*) torri neu anufuddhau’n fwriadol i unrhyw rai o ddarpariaethau’r Cyfansoddiad neu’r Datganiad o Amodau Gwaith a gyhoeddwyd yn unol â Chanon Amodau Gwaith Clerigion 2010;

(*e*) torri neu anufuddhau’n fwriadol i unrhyw rai o reolau a rheoliadau Cynhadledd Esgobaethol yr Esgobaeth y mae’r cyfryw un yn dal swydd neu’n byw ynddi;

(*f*) anufuddhau i unrhyw ddyfarniad, dedfryd neu orchymyn gan yr Archesgob, Esgob yr Esgobaeth, y Tribiwnlys, neu unrhyw un o Lysoedd yr Eglwys yng Nghymru.

*(g)* methu â chydymffurfio â chyngor Panel Diogelu’r Dalaith heb esgus rhesymol

a wneir yn erbyn unrhyw un o’r canlynol a oedd ar ddyddiad yr ymddygiad a achosodd yr achwyniad neu ddyddiad y gŵyn yn:

1. Glerig sydd wedi dal trwydded a ganiatawyd gan un o Esgobion yr Eglwys yng Nghymru;
2. Clerig sydd wedi dal Caniatâd i Weinyddu a ganiatwyd gan un o Esgobion yr Eglwys yng Nghymru;
3. Clerig sy’n derbyn pensiwn neu sydd â hawl i fudd-dal pensiwn gohiriedig gan yr Eglwys yng Nghymru;
4. Clerig sy’n derbyn unrhyw dâl neu fudd ariannol arall gan yr Eglwys yng Nghymru;
5. unrhyw un sy’n hyfforddi at y weinidogaeth awdurdodedig yn yr Eglwys yng Nghymru a noddwyd at y cyfryw hyfforddiant gan un o Esgobion yr Eglwys yng Nghymru, ac sydd wedi cytuno’n ysgrifenedig i gydymffurfio â darpariaethau’r adran hon;
6. Warden Eglwys neu Is-Warden sydd wedi dal swydd yn o blwyfi’r Eglwys yng Nghymru;
7. aelod lleyg o’r Eglwys yng Nghymru sydd wedi dal trwydded, caniatâd i weinyddu neu gomisiwn ar ran neu gan un o Esgobion yr Eglwys yng Nghymru.

**Rhan VII: Amrywiol alluoedd a darpariaethau yn ymwneud ag Esgobion Esgobaethau a Chofrestrydd yr Archesgob**

39.

1. Bydd gan yr Esgob yr Esgobaeth yr hawl i atal o’i swydd unrhyw un sy’n dal swydd yn ei esgobaeth ac y gwnaed cyhuddiad yn ei erbyn nes bod yr achos yn ei erbyn wedi’i wrando a’i benderfynu. *Darnau wedi eu dileu*
2. Bydd gan yr Esgob yr Esgobaeth yr hawl i atal o’i swydd unrhyw un sy’n dal swydd yn ei esgobaeth os yw’r Esgob wedi cael ei gynghori i wneud hynny gan Banel Diogelu’r Dalaith.
3. Bydd gan Gofrestrydd yr Archesgob yr hawl i atal o’i swydd unrhyw un sy’n dal swydd yn y Dalaith os yw Cofrestrydd yr Archesgob wedi’i gynghori i wneud hynny gan Banel Diogelu’r Dalaith.
4. Cyn defnyddio’r hawl yn is-adran 3, bydd Cofrestrydd yr Archesgob yn ymgynghori â’r canlynol:
	1. Esgob yr Esgobaeth berthnasol; ac
	2. Archesgob (neu, os mai’r Archesgob yw Esgob yr Esgobaeth berthnasol, Uwch Esgob yr Esgobaeth).
5. Yn ystod unrhyw ataliad, bydd gan:
	1. Esgob yr Esgobaeth; neu
	2. (yn achos atal Esgob yr Esgobaeth neu anallu Esgob yr Esgobaeth) yr Archesgob

yr hawl i wneud trefniadau ar gyfer cyflawni’r dyletswyddau’r swydd honno yn ystod y cyfryw ataliad.

40.

(1) Bydd gan Esgob yr Esgobaeth y gallu i orchymyn na chaiff Clerig neu ddiacones a ataliwyd fyw mewn Persondy fel y diffinnir ym Mhennod VII adran 1(*d*) na gadw meddiant ar y clastir tra bo wedi’i atal, a gall orchymyn i’r cyfryw Glerig neu ddiacones drosglwyddo pob llyfr, allwedd, ac eiddo arall a ddelir ganddo neu ganddo neu ganddi yn rhinwedd ei swydd i’r sawl a benodir gan yr Esgob i ofalu am yr eiddo hwnnw dros dro ac ar ran Bwrdd Cyllid yr Esgobaeth o fewn 14 diwrnod.

(2) Gall Clerig neu ddiacones a ataliwyd apelio yn erbyn gorchymyn o dan is-adran (1) i Lywydd Llys y Dalaith drwy roi rhybudd ysgrifenedig i Gofrestrydd Llys y Dalaith o fewn 14 diwrnod i gael ei hysbysu am y cyfryw orchymyn ac os oes apêl o’r fath yn cael ei gwneud bydd y gorchymyn yr Esgob yn cael ei atal nes penderfynu’r apêl.

41.

 (1) Bydd yn gyfreithlon i Esgob yr Esgobaeth drwy ysgrifen dan ei law neu ei llaw orchymyn atafaelu unrhyw gyflog, neu ryw ran o’r cyfryw gyflog a fyddai fel arall yn daladwy i Glerig neu ddiacones a ataliwyd, dros y cyfryw gyfnod (gan ddechrau ddim llai 14 diwrnod o ddyddiad y gorchymyn) ac ar yr amodau a fo’n gymwys ym marn yr Esgob, a rhaid i’r Esgob anfon copi o’r gorchymyn i Ysgrifennydd Bwrdd Cyllid yr Esgobaeth ac Ysgrifennydd Corff y Cynrychiolwyr, a fydd ac Ysgrifennydd Corff y Cynrychiolwyr yn cyflawni amodau’r gorchymyn.

(2) Gall Clerig neu ddiacones a ataliwyd apelio yn erbyn gorchymyn o dan is-adran (1) i Lywydd Llys y Dalaith drwy roi rhybudd ysgrifenedig i Gofrestrydd Llys y Dalaith o fewn 14 diwrnod i gael ei hysbysu am y cyfryw orchymyn ac os oes apêl o’r fath yn cael ei gwneud bydd y gorchymyn yr Esgob yn cael ei atal nes penderfynu’r apêl.

**Cefnogir gan: Backed by:**

**THE ARCHBISHOP OF WALES**

**THE BISHOP OF BANGOR**

**THE BISHOP OF ST ASAPH**

**THE BISHOP OF ST DAVIDS**

**THE BISHOP OF LLANDAFF**

**THE BISHOP OF MONMOUTH**

**Bill to amend Chapter IX of the Constitution of the Church in Wales (Safeguarding (Suspension and Disciplinary Tribunal) Bill 2020**

**Explanatory Memorandum**

As a result of questions raised and submissions made during the Church in Wales’ appearance at the Independent Inquiry into Child Sexual Abuse (IICSA), the closing submission on behalf of the Archbishop and the Representative Body included the following commitments:

*We are examining whether there should be a specific disciplinary heading for failure to comply with professional advice from the Provincial Safeguarding Officers or recommendations from the Safeguarding Panel.*

*We are looking to put in place alternative routes to suspension in the event that a Bishop refuses to implement suspension on professional advice from the Provincial Safeguarding Officers or recommendations from the Safeguarding Panel.*

The proposed amendment, to add sub-section 9(g) to Section 9 of Chapter IX, would implement the first of these commitments. The principle of the change was supported by the Bench of Bishops at its October 2019 meeting.

Consideration was given as to whether (like in the Church of England) the disciplinary offence should be tied to a failure to comply with the Church in Wales Safeguarding Policy more generally. However, following consultation with colleagues in the Church of England, it was felt that this creates an unspecific obligation which may turn out to be difficult to identify and/or enforce.

Consideration was also given as to whether the offence should attach to a failure to follow advice from the Provincial Safeguarding Officers and Safeguarding Manager. However, it was felt that restricting it to advice from the Panel would allow a cleric to challenge advice from an individual officer, to be considered by a largely independent panel of suitably qualified professionals, without fear of disciplinary sanction.

The disciplinary offence has therefore been tied to a failure to follow specific advice, on a specific case, from the Panel. What a reasonable excuse is for not following the advice has deliberately not been defined and would be for the Tribunal to determine.

The definition of the Panel is proposed to be codified by an insertion in the “definitions” section of Chapter I (see clause 2 of the Bill).

 The amendments to sections 39-41 would implement the second commitment. IICSA were very concerned that there was no means of escalating a failure of a Bishop to suspend a cleric on the advice of the safeguarding panel. This does, unfortunately, stem from a real incident in recent years where the advice of the Panel to suspend an Incumbent was not followed by the relevant Bishop.

Following some debate at Bench, the Bishops are understood to be in favour of the principle of this amendment. The Bishops were reassured by the obligation for the Archbishop’s Registrar to consult with both the relevant Bishop and the Archbishop before exercising the power.

The amendments to Sections 40 and 41 are, in effect, consequential amendments. The power to restrict housing and/or stipend whilst suspended already exists in the Constitution. It is very seldom used, and currently has no right of appeal. As part of an extension of the ability to suspend clergy, officers felt these rather draconian powers needed to be softened, through insertion of an appeal mechanism. This is not an appeal against the suspension itself, but rather an appeal against removal of remuneration and/or housing.

This appeal would need to operate swiftly, and there it is felt that an appeal to a single judge (the President of the Provincial Court) is more appropriate than convening a full Court hearing.

Consideration had been given to abolition of these powers entirely. However, there remain (rare) cases where the powers would be of use; it may be essential for the cleric’s own protection to move them from the tied house (for example, following arrest on serious criminal charges). Unavailability for work due to sickness will, after a period, impact on stipend, and it may therefore be reasonable for unavailability for work for safeguarding reasons to result in the same.

The Standing Committee

February 2020