

VI. COMMISSION OF ASSEMBLY ACT (ACT VI 1997) (AS AMENDED BY ACTS VII 2003, II 2005, XIII 2006, VI 2007, III 2009 AND II 2013)

Edinburgh, 17th May 1997, Session I.

(This Act is to be construed in conformity with Act VII 2003)

The General Assembly, with the consent of a majority of Presbyteries, enact and ordain as follows:-

1. As from the date of this Act the General Assembly shall, at their closing session each year, appoint a Commission of Assembly, hereinafter referred to as “the Commission”, as herein provided, and each Commission shall continue in office until the next Commission is appointed.

Membership

2. The membership of the Commission shall be:

- (a) one tenth of the ministers and elders commissioned by Presbyteries to the General Assembly in that year, such Commissioners to be designated by the appointing Presbyteries in accordance with the rules set out in Schedule 1 to the Appeals Act (Act I 2014).
- (b) one in ten or part of ten of the members of the Diaconate commissioned by Presbyteries to the General Assembly in that year, such members to be selected at random by the Clerks of Assembly.
- (c) members *ex officiis* of the General Assembly appointing the Commission, with the exception of the Moderator of the previous General Assembly, all of whom shall hold the same offices in the Commission as they did in the General Assembly.

Quorum

3. The quorum of the Commission shall be one-third of its total membership, and of this quorum at least one-third must be ministers and at least one-third must be elders.

Meetings

4. The Legal Questions Committee shall, if instructed by the General Assembly, and may at its sole discretion, on its own initiative, or on receipt of a request from any court of the Church or Committee of the General Assembly, or on receipt of a requisition signed by a quorum of the Commission, call a meeting or meetings of the Commission at such time or times as shall, in the opinion of the Committee, be justified by the proposed business, provided that meetings to hear cases which must be heard by the Commission in terms of Sub-section 5(d) below shall be called by the Principal Clerk in consultation with the Convener of the Business Committee, and should, as far as possible, be held in the months of October, February and May.

Powers

5. (1) The following powers are hereby delegated to the Commission, and this delegation to the Commission constituted in accordance with this Act is declared to be consistent with the law and practice of the Church hitherto and in accordance with the Articles Declaratory of the Constitution of the Church in Matters Spiritual as hereby interpreted by the Church:-

- (a) in the absence of the Moderator from any meeting, to choose their own Moderator from their own number for that meeting;
 - (b) to dispose of any matter referred to them by or in view of any Act, order or deliverance of the General Assembly;
 - (c) to dispose of any matter affecting the interests of the Church at home and abroad when the Church would be adversely affected by postponing consideration until the time of the next General Assembly;
 - (d) to hear and dispose finally of:
 - (i) all appeals and dissents and complaints, with the exception of those delegated to the Judicial Commission but including those hitherto delegated to the Property Commission, and with the further exception of those delegated to the Ministries Appeals Panel in terms of Act VI 2007;
 - (ii) all references in terms of Act VII 2003;
 - (iii) all petitions which seek review of judgements of Presbyteries on the grounds that the Petitioners could not have come by appeal or dissent and complaint or have been obstructed in so doing by the Presbytery concerned; and the Legal Questions Committee shall for each such case appoint an Investigating Committee of not less than three and not more than five members to ascertain the facts of the case before the Commission is called to deal with it, and to report to the Commission; and it is expressly declared that the General Assembly themselves shall not hear or dispose of such cases nor shall the judgements of the Commission of Assembly thereon be subject to review by the General Assembly; provided that any case in which, in the opinion of the Commission, an important issue of principle is at stake may be referred by the Commission to the General Assembly;
 - (e) to hear and dispose finally of cases other than those in sub-section (d) above, including cases in which the General Assembly are the court of first instance, but excluding petitions for admission and re-admission of ministers; provided that any case in which, in the opinion of the Commission, an important issue of principle is at stake may be referred by the Commission to the General Assembly;
 - (f) to appoint representatives on behalf of the General Assembly where such appointments are required before the next General Assembly;
 - (g) to appoint a representative or representatives to present any matter referred by the Commission to the General Assembly.
- (2) The Clerks of the General Assembly shall act as Clerks to the Commission of Assembly, though not members thereof, but the duties may be carried out by one of them. If neither of them is present, the Commission of Assembly shall appoint a substitute, whether or not a member thereof, to act as Clerk of the Commission during the sittings thereof, and the oath *de fideli* shall be administered to him or her and recorded.

Note: With effect from 18 May 2013, the provisions of section 5 should be interpreted subject to the provisions of the Appeals Act (Act I 2014).

Procedure

6. The Principal Clerk shall issue notices calling each meeting to each member of the Commission at least fourteen days before the meeting, such notices to contain intimation of the item or items of business and to be accompanied by all relevant papers.

7. When the meeting has been constituted, the Commission shall consider whether or not to proceed with any or all of the items of business, provided that this option shall not apply to

matters referred by the General Assembly in terms of Sub-section 5(b) nor to cases in terms of Sub-section 5(d); and it shall be competent for the meeting to add items of which notice has not been given, provided that the outcome will not be prejudiced by the lack of notice; and the agreement at this stage to proceed with any item shall be without prejudice to consideration of the question of competence when the item is dealt with.

8. (1) Procedure shall be in accordance with the Standing Orders of the General Assembly so far as applicable and consistent with this Act.

(2) For the avoidance of doubt, cases shall be subject to the scrutiny of the Committee on Overtures and Cases in relation to questions of competency and relevancy.

(a) The Committee may produce a report for inclusion in the papers distributed to Commission members and to parties, and make interim recommendations on process to parties and to the Investigating Committee.

(b) In the event of the Committee transmitting the case without qualification, it shall not be necessary for a written report to be prepared.

(c) Any report by the Committee shall be debated by the Commission of Assembly at the outset of the case, and parties given an opportunity to be heard in the course of such debate.

Relation to Legislation

9. The Commission shall act in accordance with the Constitution of the Church and the Acts of the General Assembly and nothing in this Act shall be construed as conferring power to contravene or amend existing legislation, or to legislate.

10. The decisions of the Commission being final, there shall be no right of appeal against them.

11. The Commission shall not have power to review any decision of the General Assembly unless, in the case of non-judicial decisions only, the Commission is fully satisfied that relevant circumstances have significantly changed.

12. The Commission shall be accountable to the General Assembly which may revoke any action in excess of the powers conferred by this Act.

Lower Courts

13. When a meeting of the Commission coincides with an ordinary meeting of a Presbytery or Kirk Session of which any member of the Commission is a member, such Presbytery or Kirk Session has permission to meet, but the priority for such member is to attend the Commission, and the Presbytery or Kirk Session shall not in the absence of such member transact any business which might be prejudicial to his or her interests.

14. All Presbyteries and Kirk Sessions shall comply with decisions of the Commission as if they were decisions of the General Assembly, as they shall be answerable to the next General Assembly.

Report to the General Assembly

15. The Legal Questions Committee shall report to the General Assembly all decisions made by the Committee in terms of Section 4 of this Act, and any other matters in connection with the Commission which, in the opinion of the Committee, should be brought to the notice of the General Assembly.

16. The Minutes of all meetings of the Commission shall be submitted to the General Assembly through the Legal Questions Committee, in the Volume of Reports, or in the Order of Proceedings, or in the Daily Papers, and they shall be laid on the table, without discussion, provided that the General Assembly may take appropriate steps to consider and

deal with any allegation that the Commission has acted in excess of the powers conferred by this Act.

Repeal

17. Act V 1981, and Act XIII 1992 are hereby repealed, and references in Act XIX 1992, and Regulations 1, 2 and 3 1992 to “the Property Commission” are amended to read “the Commission of Assembly”.