

LEGAL QUESTIONS COMMITTEE MAY 2018

Proposed Deliverance

The General Assembly:

1. Receive the Report.
 2. Amend Standing Orders 95(i), 113.12.f) and 123, all as detailed in Section 1 and Appendix A of the Report. (*Section 1 – Amendments to Standing Orders and Appendix A*).
 3. Instruct the Committee, in consultation with others, to prepare a new Church Courts Act in line with the terms of this Report and to bring the new Act to a future Assembly for approval (*Section 2*).
 4. Pass the Ordination of Ministers of Word and Sacrament and Deacons Act as set out in Appendix B (*Section 3 and Appendix B*).
 5. Pass the Parish Ministry Act as set out in Appendix C (*Section 3 and Appendix C*).
 6. Approve the Discipline Overture as set out in Appendix D and transmit the same to Presbyteries under the Barrier Act, directing that returns be sent to the Principal Clerk by 31st December 2018 (*Section 4 – Discipline Overture and Appendix D*).
 7. Pass the Legal Aid in Disciplinary Proceedings Regulations as set out in Appendix E (*Section 5 and Appendix E*).
 8. Pass an Act amending the Appeals Act (Act I 2014) as set out in Appendix F (*Section 6 and Appendix F*).
 9. Pass Acts amending the Discipline of Ministry Act (Act III 2001) and the Discipline of Elders, Readers and Office Bearers Act (Act I 2010) as set out in Appendices G and H (*Sections 7 & 8 and Appendices G & H*).
 10. Note that the Legal Questions Committee has undertaken a study of the matters which would require to be addressed in any new legislation permitting Ministers and Deacons to officiate at same-sex marriage ceremonies and that this is presented in the report at section 9 with the Opinion of the Procurator annexed at Appendix I.
11. Pass the Virtual Attendance at Meetings Act as set out in Appendix J (*Section 10 and Appendix J*).
 12.
 - a) Note that nine Presbyteries have taken part in a pilot Presbytery Review process,
 - b) Agree that a further cycle of Reviews should take place in 2018-2019, and
 - c) Instruct the Committee to report further to the General Assembly of 2019 (*Section 11*).

Report

1. AMENDMENTS TO STANDING ORDERS

1.1 The report of the Assembly Arrangements Committee contains a proposal at section 5 that the time allowed for a speech from the mover of an amendment or counter motion should be reduced from 10 minutes to 5 minutes, but that seconding should not be formal, so that five minutes would be allowed for such a speech. The corresponding change to Standing Orders, if agreed, is set out in Appendix A.

1.2 It is proposed that SO 113.12 f) (Ecumenical Relations Committee) be amended by adding the following words at the end: "The Convener shall be entitled to call a meeting of the voting members." Subsection f) as it will appear, if agreed, is set out in Appendix A.

1.3 It is also proposed that SO 123 be amended, to apply not only to Conveners but also Vice-Conveners, and that it be further amended to include consistent non-attendance as a reason for replacement of both Conveners and Vice-Conveners. The form of the amended Standing Order is set out at Appendix A.

2. CONSULTATION ON MEMBERSHIP OF CHURCH COURTS

2.1 Background to the Consultation

2.1.1 The Assembly of 2017 instructed the Committee to undertake a consultation in relation to the membership of Church Courts. It was noted that the current law of the Church tends to focus on 'entitlements' to membership, rather than reflecting the 'duties and responsibilities' that ought to accompany such membership.

2.1.2 The report of the Committee highlighted relevant feedback which had been received from Presbyteries when making their returns under the Registration of Ministries Overture. Particular comments had been made to the effect that any individual who holds Presbytery membership ought to be involved in the work of the Presbytery in a positive and active manner. It was argued that this is nothing less than the fulfilment of vows taken at ordination. It was further noted, that where the members of Church Courts serve as charity trustees, there is an expectation, under civil law, that they should be actively involved in decision making processes. This

is relevant to all Kirk Sessions and to those Presbyteries which are registered as charities.

2.1.3 In accordance with the Assembly instruction, a consultation was undertaken during the Autumn of 2017. Over 130 responses were received, the majority being submitted by Session Clerks, Presbytery Clerks and individual elders.

2.2 Responses to the Consultation Kirk Sessions

2.2.1 Most returns acknowledged the issue of elders who fail to attend Kirk Session meetings and many recognised that this is at odds with the duties of charity trusteeship. While the Church Courts Act allows Kirk Sessions to take steps to remove such elders after a year of non-attendance, in practice this provision is seldom used. Nevertheless, the majority of responders were reluctant for this to be strengthened in ways which would make the removal of such elders obligatory.

2.2.2 Some positive suggestions were made regarding steps which might be taken to encourage the ongoing commitment of elders. These included the annual renewal of ordination vows and also the possibility of sabbatical leave being granted. The notion of elders being appointed to serve on Kirk Sessions for fixed-terms received a mixed response. Those favouring the idea generally preferred it to be an option for Kirk Sessions, rather than a requirement. There was also a preference for any such fixed-term appointments to be renewable.

2.2.3 Most responders favoured revising the 'functions of the Kirk Session' which are listed in the current Act. In particular there was widespread recognition that the historical roles of Kirk Sessions in superintending the moral welfare of parishes and imposing discipline are largely anachronistic.

Presbyteries

2.2.4 Responders were virtually unanimous in stating that membership should entail an obligation to attend meetings and to participate in the wider work of Presbytery. While some wished the roles of retired ministers to be restricted, the majority were content for them to be full members, subject to attending meetings and playing a full part. The consultation sought comments in relation to ministers who are currently entitled to membership by virtue of the posts

that they hold, but who fail to attend meetings or to participate in the wider work of Presbytery. Responders questioned whether such individuals should retain seats in Presbytery and some favoured disciplinary action to address non-attendance.

2.2.5 Particular comments were received from the Presbytery of International Charges, highlighting discrepancies which occur, in their own case, where some Acts of Assembly refer to the 'Presbytery of the bounds'. Some adjustments to legislation may be helpful, to clarify who might rightly qualify for membership of that particular Presbytery.

2.2.6 Responders were asked to identify issues that hinder the ability of Presbyteries to lead the Church forward in mission. A broad range of responses was received, including matters such as bureaucracy, finance and the size of Presbyteries, with varying opinions about whether they were too large or too small. Some of these issues perhaps merit being part of wider discussions, for example in the work being undertaken in relation to Presbytery Review.

2.2.7 There was little agreement among responders of what might be added, or taken away, from the remits of Presbyteries. For example, while some wished fabric matters to be more fully devolved to Presbyteries, others preferred Presbyteries to be entirely relieved of such duties.

2.2.8 The consultation sought views on how Presbyteries might be held accountable for fulfilling their remits. Suggestions included the further development of Presbytery Review, which would generate 'action plans' similar to those produced in local church review.

General Assembly

2.2.9 The consultation generated fewest comments in relation to the General Assembly. This reflected the fact that many responders had little or no direct experience of the Assembly.

2.2.10 A range of views were expressed about the size of the General Assembly, which consisted of 713 commissioners in 2017. While some responders were content with the current level of membership, others were in favour of a reduction. Most responders were in favour of ministers being granted commissions once every 3 to 5 years. With regards to elder commissioners a suggestion was made that linked

congregations should each be entitled to send a commissioned elder, rather than a single elder being appointed for the whole charge. Generally speaking Presbyteries tend to allocate commissions according to their own rota systems, with some Presbyteries requiring ministers to attain a specified level of attendance at Presbytery meetings to qualify.

2.2.11 Further comments were received regarding the practical arrangements, dynamics, ethos and public profile of the General Assembly. Some of these are perhaps more relevant to the work of the Assembly Arrangements Committee rather than to this legislative review.

2.3 Conclusions

2.3.1 The Committee seeks authorisation to draft a new Church Courts Act. The new legislation would clearly define the functions of each court, updating these where necessary to reflect what is appropriate at the present time. The draft Act would also address issues of membership of each court, clearly stating the responsibilities which accompany such membership. In bringing revised legislation some specific issues would be addressed such as those raised by the Presbytery of International Charges.

2.3.2 The Committee is aware that this consultation has raised certain issues which overlap with work being undertaken by the Eldership Working Group (EWG) of the Mission and Discipleship Council. The EWG has been considering issues such as fixed-term appointments of elders which potentially raise theological issues about the Church's understanding of ordination. The Committee therefore asks to do this work in consultation with the EWG. In this regard, consequential amendments would most likely also be required to the Election and Admission of Elders and Deacons Act (Act X 1933).

3. THE ORDINATION BY PRESBYTERIES ACT AND THE PARISH MINISTRY ACT

3.1 In the Committee's report to the 2017 General Assembly, permission was sought to revise the Ministry Act (Act II 2000) in the light of other recent amendments which had taken place. It was proposed that the provisions relating to ordination (and thus which are relevant to a variety of ministries) should be separated from those which relate more specifically to parish ministry. The purpose of the proposed

revision was largely a 'tidying up exercise' which would make Church Law more accessible and logical for those who were using it, rather than introducing changes of substance.

3.2 In this regard the Committee now proposes the adoption of a new "Ordination by Presbyteries Act" which consolidates previous legislation relating to ordination. It combines the relevant provisions of the Ministry Act with those of the Ordination of Professors and Lecturers Act (Act VII 2010) and those in the Presbytery Ordination Act (Act III 2004). The proposed new legislation also makes specific reference to Deacons, who had previously only been mentioned obliquely by cross-referencing from the Deacons Act (Act VIII 2010).

3.3 The Committee also proposes the adoption of a new "Parish Ministry Act" which essentially contains the remaining provisions of the former Ministry Act. This has been lightly amended to reflect recent changes in nomenclature which have been adopted in other legislation. Some minor adjustments have also been made, with a view to clarifying certain sections which some users had previously found difficult to read.

4. REVIEW OF THE DISCIPLINARY ACTS – A DISCIPLINE OVERTURE

4.1 The General Assembly of 2014 instructed the Committee to review the Acts of the General Assembly dealing with matters of Discipline, Bullying and Discrimination, with a view to bringing forward one consolidating and cohering Act to a future General Assembly.

4.2 Owing to the complexity of the task and the time, necessarily, taken to conduct probably the widest and most fruitful consultation exercise throughout our Church on the purpose and content of any prospective Act of the General Assembly, it is only after four years of intensive work by the Working Group, established by the Committee, that we are now able to bring this major piece of legislation to the General Assembly, as the Discipline Overture 2018.

4.3 At present, there are four relevant Acts: the Discipline of Ministry Act (Act III 2001), the Protection against Bullying Act (Act IV 2007), the Protection against Discrimination Act (Act V 2007) and the Discipline of Elders, Readers and Office Bearers Act (Act I 2010).

4.4 The proposed new Discipline Act has been drafted generally in accordance with the principles approved by the General Assembly of 2017 (see section 2.7, page 5/3). If approved by the General Assembly and Presbyteries, under Barrier Act procedure, from 2019 there will be one single Act dealing with Discipline in our Church, with one single procedure, designed to allow for a quicker disposal of Disciplinary Cases than hitherto. From the many responses received, during the extensive consultation exercise on this draft Act, there is no doubt that, if that aim is achieved, it will be to the enduring benefit of all of those who become involved in Disciplinary Cases in the future.

Conclusion

4.5 The Committee therefore commends the Discipline Overture, together with the Legal Aid Regulations (see section 5 below) to the General Assembly as a Disciplinary Code for our Church fit for the 21st Century.

5. LEGAL AID REGULATIONS

5.1 Currently, the full cost of legal advice or representation by a solicitor (and/or counsel, if sanctioned) for ministers facing disciplinary proceedings under Act III is paid from central Church funds. The cost to the Church is very considerable, and is greatly in excess of the financial resource which is available to those involved in such proceedings in an employment context. On one estimate, ministers receive more than ten times the benefit in terms of legal funding which they might expect to receive in the civil sphere, were they to have access to Employment Tribunals. It is difficult to reconcile this fact with the obligations of the Church to exercise good stewardship of its increasingly scarce resources. The Committee therefore concluded, as reported in 2017, that a new system of ecclesiastical legal aid should replace the current system of full reimbursement of legal costs.

5.2 The consensus arising from the consultation carried out by the Working Group was that legal assistance should not be restricted to ministers but should also be available to elders and other office-bearers in connection with Act III proceedings. This is reflected in the new scheme, to the extent that where a right or interest which is at stake is of the nature of a civil right, that person will be eligible for assistance.

5.3 The Legal Aid Regulations set out in Appendix E will place ministers broadly in the same position that they would

be in if they were employees. The new scheme will provide the possibility of legal assistance but will recognise that this may not be free and that those who can pay, should pay. The Regulations are referred to for their terms, but the essential elements of the scheme will be:

- Applicants will apply to a Legal Aid Committee, which will be a Sub-Committee of the Legal Questions Committee, for certificates authorising the grant of legal aid for each stage of the disciplinary process, including any appeal
- The test of whether or not certificates are granted will be two-part and will address both (a) whether, in the whole circumstances of the case, legal representation is necessary to enable the applicant to receive a fair hearing and (b) having regard to the financial resources available to the applicant, whether he or she could, without financial hardship, afford such representation
- The means test applied under (b) above will consider the disposable income and capital available both to the applicant and to his/her spouse or civil partner. It will reflect the income and capital thresholds, and sliding scale of contributions, applied by the Scottish Legal Aid Board. These can be found in Part Two of the Regulations. In calculating “disposable” income and capital essential outgoings such as mortgage/rent payments, Council Tax, payments for dependents etc are disregarded. Detailed provisions for calculation of the appropriate figures are found in Part Three of the Regulations.

5.4 The Committee believes that its proposals for a new system of ecclesiastical legal aid will provide a transparent, fair and financially justifiable system of access to justice within the Church’s disciplinary framework.

5.5 For ongoing disciplinary matters where investigatory proceedings are initiated and the Respondent (being a minister) appoints a solicitor before 31 May 2018, the view has been taken that such ministers should be able to continue on the existing basis with their existing solicitor. Transitional amendments to Act III 2001 are included in the proposed amending Act found at Appendix G.

6. REDUCTION IN THE SIZE OF THE POOL FOR THE JUDICIAL COMMISSION

6.1 The Appeals Act currently provides that there shall be a pool of forty persons from which shall be selected seven

ministers or deacons and six elders to serve on a Judicial Commission. In practice, the Judicial Commission, although meeting twice this year, has not met since 2010 and this seems too large a number of people to retain in the pool when they could be taking on other tasks. It is therefore proposed to reduce the number in the pool from forty to twenty-five and a proposed amending Act is attached in Appendix F.

7. INTERIM UPDATING OF ACT III 2001 & ACT I 2010 AS TO SAFEGUARDING OFFENCES

7.1 In the course of working on the Discipline legislation, it became apparent that some consequential changes were required to the Discipline of Ministry Act and the Discipline of Elders, Readers and Office Bearers Act to bring Safeguarding offences up to date. Proposed amending Acts are attached at Appendices G & H. These changes are expected to be superseded by the new Discipline legislation, and the proposed Overture already provides for such offences.

8. FURTHER MINOR AMENDMENTS TO ACT III 2001 (DISCIPLINE OF MINISTRY)

8.1 The terminology in section 22 of Act III 2001 has been found to be slightly loose, in its use of “submitting” an appeal, as opposed to “intimating” or “lodging” it. To clarify this, amendments are proposed to section 22 of Act III 2001 and these appear in the proposed amending Act which is attached at Appendix G.

8.2 It has also emerged that a provision which used to appear in Act III 2001 regarding the Judicial Commission receiving a Note about an appeal from the Presbyterial Commission has been deleted, perhaps inadvertently. The proposed amending Act attached at Appendix G reinstates this.

9. SAME SEX MARRIAGE CEREMONIES

9.1 Introduction

9.1.1 The General Assembly of 2017 received a report from the Theological Forum, “An Approach to the Theology of Same Sex Marriage”. The Assembly instructed the Legal Questions Committee to “undertake a study of the matters which would require to be addressed in any new legislation permitting Ministers and Deacons to officiate at same-sex

marriage ceremonies.” The Committee understood that, in the absence of a relevant policy decision from the General Assembly, this remit does not extend to writing such legislation at this time.

9.1.2 The Committee recognised that, in relation to this issue, the Church is concerned to preserve the rights of individuals who wish to abide by historic and current doctrine and practice of the Church in relation to human sexuality. In particular, the Church must ensure that such individuals are not exposed to increased risks of litigation, on the grounds of discrimination, as a consequence of some Ministers and Deacons being allowed to officiate at same-sex marriage ceremonies.

9.1.3 The Committee began its work by commissioning a formal opinion (‘the Opinion’) from the Procurator. The Opinion (included as Appendix I) provides an overview of the options that are available to the Church under both Civil Law and Church Law. The Opinion identifies potential risks which might arise and recommends steps that might be taken to mitigate against these.

9.2 An Overview of Relevant Legislation

9.2.1 The Opinion considers The Marriage (Scotland) Act 1977. This civil legislation governs marriage in Scotland and was amended in 2014 to allow marriages to take place between people of the same sex. The Opinion considers the options that are available to religious or belief bodies in this legislation in relation to same sex marriage.

9.2.2 The Opinion focuses on the provisions of The Equality Act 2010. This legislation provides a legal framework which is intended to protect the rights of individuals and to advance equal opportunities. Prior to the enactment of the above legislation relating to same sex marriage, the Equality Act was amended, providing certain safeguards for individuals who refuse to participate in religious or belief ceremonies which relate to the solemnising of marriages between people of the same sex.

9.2.3 The Opinion considers the Recognition of Marriage Services Act (Act I 1977). This is the Church’s own legislation which specifies what is required in any marriage service conducted by a Church of Scotland Minister or Deacon.

9.2.4 The Opinion identifies potential issues in relation to intrusion and also the use of church buildings. In this regard

certain provisions of the Ministry Act (Act II 2000) would also require consideration. (Note: If approved at the 2018 Assembly, this legislation will be revised and renamed ‘The Parish Ministry Act’.)

9.3 Conclusions

9.3.1 In the light of the analysis undertaken, the final section of the Opinion presents a list of conclusions. The Committee is of the view that these conclusions potentially provide the necessary guidance for the Church at this time if it chooses to permit some of its Ministers and Deacons to officiate at same-sex marriage ceremonies.

9.3.2 The Opinion identifies that, in such circumstances, the Church might best proceed in accordance with Section 9(1A) of the Marriage (Scotland) Act. Such an approach would maintain the Church’s ‘default’ position on human sexuality, while allowing a limited departure, for specified individuals, who wish to officiate at same sex marriage ceremonies.

9.3.3 It should be noted that if specified individuals were to be nominated to the Registrar General under section 9(1A) of the Marriage (Scotland) Act, the Registrar under section 9(4) would then determine the period during which the nominees would be empowered to solemnise same sex marriages, being a period of not more than three years. The practicalities of this have been investigated and we understand that the Registrar currently has three groups on different three year cycles, so he would determine which group to put any Church of Scotland celebrants in.

9.3.4 The conclusions further identify where existing Church legislation would require to be amended and where new legislation would be required. There would be particular needs to ensure that individuals are not compromised who usually have more of a peripheral role at marriage ceremonies (for example Church Officers) and who are not directly participating in the ceremony.

9.3.5 It should be noted that the scope of the Opinion is limited to Scots Law in so far it focusses on The Marriage (Scotland) Act 1977. Were Ministers or Deacons of the Church of Scotland to be allowed to officiate at same sex marriage ceremonies in England, or in other legal jurisdictions, then further work would need to be undertaken.

9.3.6 It should be further noted that the Opinion contains an assessment of factors relating to same-sex marriage at

this particular point in time. It is not possible for the Committee to future-proof the advice that it offers to the Church, since civil legislation can be changed by Parliament. The Committee has an ongoing role advising the Church when any such changes are pending, with a view to seeking the best interests of the Church.

9.3.7 In presenting this report with the Opinion as an Appendix, the Committee is of the view that it has fulfilled the remit given at the 2017 General Assembly.

10. VIRTUAL OR REMOTE ATTENDANCE AND PARTICIPATION IN CHURCH MEETINGS

10.1 The deliverances

10.1.1 The General Assembly of 2016 passed the following deliverances in this area:

- a) *“Instruct the Committee, in consultation with the Ministries Council and the Mission and Discipleship Council, to explore the opportunities and limitations of the use of remote means of access to church meetings, and where possible bring forward amending legislation which would enable this practice to be used more widely and report to the General Assembly of 2018”;*
- b) *“Instruct the Committee, in consultation with the Theological Forum, the Ministries Council and the Mission and Discipleship Council, to review the Vacancy Procedure Act (Act VIII 2003) with reference to the place, practical operation and inclusiveness of the congregational vote in our understanding of the right to call and to report to the General Assembly of 2018”; and*
- c) *“Instruct the Committee, jointly with the Mission and Discipleship Council and the Theological Forum, to research the implications for the Church of Scotland of the development of online church and report to the General Assembly of 2018”.*

10.1.2 This report will focus on deliverance (a) above only. A draft Act is appended to enable remote means of access to church meetings on a video and/or audio platform to be permitted, and thus ‘virtual attendance’ to occur in specified circumstances.

10.1.3 As regards deliverance (b) above in relation to the place, practical operation and inclusiveness of the congregational vote in the context of vacancy procedure, the concern underlying the deliverance related, in particular, to housebound members being unable to participate in congregational voting at such times. The question raised is whether there should be provision either for proxy voting at such a meeting in a vacancy, postal voting, or ‘post-event’ voting, in order to ensure inclusivity. The view of the Committee, in relation to the vacancy procedure legislation as it presently stands, is that the primary focus of ensuring the inclusion of all members is outweighed by practical difficulties in all such possibilities, such that the risk of voting without informed choice, or under the undue influence of others, is too high. However, the Committee is presently entrusted by the General Assembly to carry out a review of the Vacancy Procedure Act (Act VIII 2003) as a whole, and to report to the General Assembly of 2019. The Committee will ensure, therefore, that this matter receives due attention in that review, and that all possibilities will be explored to amend the Act in ways which might, indeed, permit the participation of the most marginalised members within vacancy procedure.

10.1.4 As regards deliverance (c) above in relation to ‘online church’, there are no immediate issues of concern from its current practice which have been raised with the Legal Questions Committee, by either the Theological Forum or the Mission & Discipleship Council, which would then require a report or draft legislation by this Committee. The Committee will await any further developments.

10.1.5 Therefore, when ‘online presence’ is considered here, it is in the context of the meeting of members of a ‘Designated Body’ in terms of the draft Act – the ‘church online’ rather than an ‘online church’.

10.2 Discussion and opinion on deliverance (a) – remote access & virtual attendance

10.2.1 The issue raises a tension of forming a balance between the theological impulse to include the ‘outsider’ and the excluded; along with the necessity to ensure fairness, justice and equity in the proceedings of the Church. It also impacts on the notion of ‘congregation’, the importance of the gathering of the people, and whether the Christian community must be physically present together so as to exercise its common calling as an *ekklesia*. The nub of the issues raised are:

- Is there an injustice caused, in particular, by excluding those who wish to exercise their rights, but cannot do so when their physical absence from a meeting is caused by matters outwith their control, such as illness and infirmity or enforced absence through work or family circumstances? Do they need to be there in person, or can they exercise those rights otherwise?

In our view, there is such an injustice where remote access on a virtual, online platform is available and would permit their 'attendance' otherwise, such that their physical presence is replicated.

- If there is such an injustice, is it outweighed by the need to ensure fair and equitable procedure, and the potential pitfalls and practical difficulties of allowing remote participation and/or voting? Can such people be included in a way that does not vitiate the whole procedure, or render it unworkable?

In our view, in specified circumstances fair and equitable procedure can still be achieved when an individual participates and votes in a meeting remotely, such that the procedure of the meeting is not vitiated or unworkable.

10.2.2 Remote access to a meeting, with participation and voting on a video and/or audio platform, should, therefore, be permitted to allow an individual to exercise rights of membership of a church court, or Council or Committee of the General Assembly.

10.2.3 The decision as to whether to allow the employment of such a means of access and participation should be for the Designated Body itself. That decision should be permissive and in the alternative to existing procedures i.e. they are not compelled to do so but can choose not to use remote access at all, or to do so only for a specified meeting or meetings.

10.2.4 Two issues arose for the Committee to consider in relation to the nature and extent of such permission. Firstly, the issue arose as to whether particular categories of absentees should be considered in different ways. For example, should the long-term housebound be allowed greater flexibility as compared to those who are on holiday? The difficulty arising in seeking forms of categorisation, and judging the extent of rights as a result, would be that boundaries might be artificial, may well be disputed, and

could be ignored. A single policy for those not present at meetings appears preferable for those reasons.

10.2.5 Secondly, should a 'reasonable excuse' be required for a person not to be physically present at a meeting? If so, the moderator or convener of a meeting would need to assess and rule upon whether or not a person should be permitted 'virtual attendance', depending on the reason for their absence. The purpose would be to encourage physical attendance and discourage backsliding. This raises a wider issue of whether 'virtual attendance' should be an exception to a general rule expecting physical presence at a church meeting, or whether a Designated Body might simply grant blanket permission for 'virtual attendance' for anyone at any meeting, without enquiring into the reason for their absence.

10.2.6 Following discussion, the Committee concluded that to enforce the former would require investigation and decision which could be invasive and unjust, and that the refusal of an individual to attend virtually if the reason for absence was deemed to be insufficient would be harmful pastorally, as well as placing an onerous burden on the moderator or convener. Therefore, the latter route was preferred – that all who wish to do so can avail themselves of this right, without enquiry as to reason for their physical absence.

10.2.7 However, criteria are included in the draft Act as to what constitutes 'virtual attendance' at a 'relevant meeting'. The key issue in voting at such a meeting is the need for informed choice. In the Committee's view, that can only be achieved by physical presence at the meeting and voting in person; or by a remote presence in like manner, whereby the virtual attendee:

- subject to their physical capabilities and the technology available, is able to see and/or hear the debate;
- has the ability to ask questions which the meeting may consider, and to answer questions posed of them by those physically present at the meeting, or by others attending virtually; and
- is then able to vote contemporaneously with those who are physically present.

10.3 Conclusion

10.3.1 In conclusion, therefore, we recommend, that 'virtual attendance' be permitted in all 'relevant meetings' of a 'designated body' as defined, by permission of that body and under specified criteria.

11. PRESBYTERY REVIEW

11.1 It was reported to the General Assembly of 2017 that a pilot Presbytery Review process was in preparation. The Presbyteries of Aberdeen, Angus, Edinburgh, Hamilton, Inverness, Lanark, Lochaber, Melrose and Peebles, and Stirling agreed to take part in the exercise. Following the Assembly, representatives met in Edinburgh to edit the materials and plan the work.

11.2 Like Local Church Review, Presbytery Review was set up as a means by which a Presbytery would look at its work under three headings with a "peer reviewer" encouraging the "reviewee" to be honest and open in answering the questions and completing the tasks. Three packs needed to be completed. Pack 1 is entitled "Facts and Figures - the Presbytery in terms of geography, numbers and church law." Pack 2 focused on "The Presbytery Today - the where, what and how of Presbytery's current life." Pack 3 asked for "Future Plans - aims and objectives for the next five years."

11.3 Each of the nine Presbyteries was reviewed and acted as a reviewer. Representatives of the Presbyteries met in February 2018 to reflect on their experiences. The consensus was that Presbytery Review was not only helpful but also essential. There were comments about how the material could be improved and the desirability of being given sufficient notice of a Review to allow planning and preparation. It was noted that at present there was no clear line of accountability for Presbyteries and there was discussion about how the General Assembly might be given some insights into the life of reviewed Presbyteries.

11.4 In view of the positive comments the Committee would now like to undertake a further cycle of reviews. At the time of writing, a further eight Presbyteries have expressed an interest in a potential next round of reviews. If that round is allowed and completed, the Committee would bring a full report to the General Assembly of 2019 looking at whether Presbytery Review might become a regular part of the Church's superintendence scheme and how that could be achieved.

12. EXAMINATION OF RECORDS

12.1 In accordance with the arrangements set in place by the General Assembly of 2000 the Legal Questions Committee has examined the relevant records of Assembly Councils and Committees. These have been found, generally, to be in order, with suggestions for improvements, in consistency of pagination and other minor matters, being made to the Convener and Secretary of each Council and Committee.

In the name of the Committee

GEORGE S COWIE, *Convener*
ALISTAIR MAY, *Vice-Convener*
GEORGE J WHYTE, *Secretary*

Appendix A

Amendments to Standing Orders

Standing Order 95(i) will read:

95. Limits. All speeches shall be limited to 5 minutes, with the following exceptions:
 - (i) COMMITTEES Convener giving in the Report of his or her Committee and moving thereon (seconding to be formal) 15 minutes
Convener responding to a question 4 minutes
 - (ii) OVERTURES Introducing an Overture and when the Introducer is a Commissioner, moving thereon 10 minutes
Mover of other Motions in relation to Overture (seconding to be formal) 10 minutes
 - (iii) PETITIONS Speeches of Petitioners 10 minutes

Standing Order 113.12.f) will read:

"113.12.f) For the avoidance of doubt, while only those persons appointed under paragraphs a) and b) above shall be entitled to vote, before any vote is taken the views of members representing other churches shall be ascertained. The Convener shall be entitled to call a meeting of the voting members."

Standing Order 123 will read:

"123. Replacement. In the event of the death, resignation, consistent non-attendance or supervening incapacity of the Convener or Vice-Convener of any Council or Committee, the body concerned, after consultation with the Convener of the Nomination Committee, may appoint an Interim Convener or Interim Vice-Convener, as the case may be. Such appointment shall be reported by the Committee to the General Assembly and the Assembly shall make such order as the situation may require."

Appendix B

[XX] ORDINATION OF MINISTERS OF WORD AND SACRAMENT AND DEACONS – CONSOLIDATING ACT

Edinburgh, [] May [], Session []

The General Assembly declare and enact as follows:-

Definitions

1. (1) "Auxiliary Minister" means a person referred to as such in the Auxiliary Ministry Act (Act XIII 2003).
- (2) "Charge" shall mean a sphere of pastoral duty to which a parish minister is (i) inducted, or (ii) introduced under the arrangements set out in the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007).
- (3) "Deacon" means a person referred to as such in the Deacons Act (Act VIII 2010).
- (4) "Minister" means an individual who has been ordained to ministry as defined in section 1(d) of the Selection and Training for Full-Time Ministry Act (Act X 2004).
- (5) "Ministers of Word and Sacrament" includes Ministers, Auxiliary Ministers and Ordained Local Ministers.
- (6) "Ordained Local Minister" means a person referred to as such in the Ordained Local Ministry Act (Act IX 2011).

Ordination of Ministers of Word and Sacrament and Deacons

2. (1) Authority to ordain persons as (i) Ministers of Word and Sacrament or (ii) Deacons, is vested in Presbyteries.
- (2) Ordination is normally conferred on (i) the holder of an Exit Certificate or of a Graduate Candidate's Certificate in terms of either Act X 2004 or Act IX 2011, or (ii) an individual who has satisfactorily completed a prescribed course of training for the Diaconate and who is recommended for ordination by the Ministries Council, all in accordance with the Deacons Act (Act VIII 2010).
- (3) Ordination of a person described in section 2(2) may occur in any of the following situations:
 - (i) in connection with induction by the Presbytery to a Charge,
 - (ii) in connection with introduction as an associate minister in a Charge,
 - (iii) in connection with introduction as an assistant minister in a Charge, in connection with introduction as an assistant minister in a Charge,
 - (iv) in connection with introduction as an Ordained Local Minister to a designated appointment,
 - (v) in connection with introduction as a Deacon to a post in terms of section 11 of Act VIII 2010,
 - (vi) in relation to an appointment, the duties of which, in the judgement of the Presbytery, should be undertaken by an ordained Minister,
 - (vii) in connection with introduction as a Chaplain to H.M. Forces,
 - (viii) in connection with introduction as a professor or lecturer to a chair or lectureship in an accredited institution (as

- defined in section 1(k) of Act X 2004, ordination being by the Presbytery in which the institution is located, or
- (ix) in connection with an overseas appointment made by, or with the approval of, the World Mission Council, ordination in such a case being by a Presbytery in Scotland where there is no local Presbytery having jurisdiction, provided that the Presbytery is satisfied as to the arrangements made.
- (4) Where an induction or introduction is to a parochial appointment, an edict shall be read as required by the Vacancy Procedure Act (Act VIII 2003). Otherwise public notice of the intention to ordain shall be given, normally at a Presbytery meeting for ordinary business.

Conduct of Ordinations

3. All services of ordination shall include the reading of the Preamble, the taking of the ordination vows and the signing of the Formula as prescribed in the Basis and Plan of Union.
4. The ordination of a Minister of Word and Sacrament shall be led by a Minister of Word and Sacrament who shall, if the Moderator of the Presbytery be not a Minister of Word and Sacrament, be appointed by the Presbytery from among its members who are Ministers of Word and Sacrament.
5. The ordination of a Deacon shall be led by a Minister of Word and Sacrament or Deacon who shall, if the Moderator of the Presbytery be an elder, be appointed by the Presbytery from among its members who are Ministers of Word and Sacrament or Deacons.

Laying-on of Hands in Ordinations

6. At the ordination of a Minister of Word and Sacrament or a Deacon, all Ministers of Word and Sacrament, Deacons and elders who are members of the ordaining Presbytery are eligible, with others who may be associated with the Presbytery, to take part in the laying-on of hands. Without prejudice to this general eligibility, the Presbytery may, in the interests of good order, determine which of these shall do so at any particular ordination.

Extract Minute

7. Following an ordination, the Presbytery Clerk shall send an extract minute to the Secretary of the Ministries Council.

Commencement, Amendments and Repeals

8. (1) This Act shall come into force on XXX.
- (2) Act II 2000 (Ministry), Act III 2004 (Presbytery Ordinations) and Act VII 2010 (Ordination of Professors and Lecturers) shall be repealed on that date.

Appendix C

[XX] PARISH MINISTRY ACT

Edinburgh, [] May [], Session []

The General Assembly declare and enact as follows:-

Definitions

1. (1) "Charge" means a sphere of pastoral duty to which a Parish Minister is (i) inducted or (ii) introduced under the arrangements set out in the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007).
- (2) "Minister of Word and Sacrament" shall apply to (i) a minister ordained in the Church of Scotland in terms of the Ordination of Ministers of Word and Sacrament and Deacons Act, or (ii) a minister ordained in another church who has been admitted to the Church of Scotland as a Minister of Word and Sacrament by the General Assembly, or (iii) a minister who has been inducted or introduced to a Charge or appointed to a position or office in the Church of Scotland in accordance with a mutual eligibility agreement, or by virtue of holding a Certificate of Eligibility obtained from the Ministries Council or its Executive.
- (3) "Parish Minister" means a Minister of Word and Sacrament (i) inducted by a Presbytery to a Charge or (ii) introduced to a Charge under the arrangements set out in the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007).

Interim Ministers and Transition Ministers

2. Interim Ministers and Transition Ministers are employed ministers introduced to a Charge for a specific reason and for a specific time. Such ministers will not be inducted to the Charge, which will remain technically vacant in terms of the Vacancy Procedure Act (Act VIII 2003) but they will become Interim Moderator of the Kirk Session(s). The provisions of this Act apply to such Ministers insofar as they are Interim Moderator of the Kirk Session(s).

Interim Moderators

3. (1) For the purposes of this Act an Interim Moderator, if a Minister of Word and Sacrament, shall have the privileges and duties of a Parish Minister, consistent with section 7 of Act VIII 2003. For the avoidance of doubt, this provision applies to Interim Ministers and Transition Ministers.
- (2) For the avoidance of doubt, where an elder is serving as Interim Moderator, his/her role shall not extend to performing the functions of parish ministry as stated in section 5 of this Act.

Intrusion

4. A Parish Minister's field of ministerial work and responsibility lies generally within and does not extend beyond his or her own Charge. A Minister of Word and Sacrament shall not be entitled to enter the bounds of the Charge of an existing Parish Minister to perform ministerial functions without the previous consent of the Parish Minister in question, save in the following circumstances:
 - (1) where he or she is acting under special commission or order of the Presbytery of the bounds, or of the General Assembly; or
 - (2) where a Parish Minister enters the bounds of the Charge of another Parish Minister for the purpose of ministering to members and adherents of his or her own Charge, or
 - (3) where a Minister of Word and Sacrament holds a post which is listed in sections 11, 12 or 13 of Act III

2000 and enters the bounds of the Charge of a Parish Minister to discharge duties which are directly connected with that post, or

- (4) where a Minister of Word and Sacrament enters the bounds of the Charge of an existing Parish Minister to officiate at a marriage or funeral by private invitation.

This Act shall not prohibit a Minister of Word and Sacrament from accepting an invitation to conduct divine service in a church of another denomination.

[For the purposes of the conduct of marriages, this section shall apply to Deacons, see Act VIII 2010, section 12.]

Functions of Parish Minister

5. The ministry of the Word, the conduct of public worship, the dispensing of the Sacraments, and the instruction of the young belong to the Parish Minister, subject to the control and direction of the Presbytery.

Conduct of Public Worship

6. Responsibility for the conduct of public worship includes responsibility to ensure that public worship is conducted in an orderly and reverent manner by the Parish Minister, or in accordance with section 7, or by other persons under the supervision of a Minister of Word and Sacrament, being present in person.
7. For the conduct of public worship in the absence of the Parish Minister, and subject to section 9, only the following may be employed:
 - (1) Ministers of Word and Sacrament of the Church of Scotland;
 - (2) Ministers of Word and Sacrament of other Churches:
 - (a) with whose Churches there is a mutual eligibility agreement,

- (b) with whose Churches a common recognition of ministries has been approved by the General Assembly'
 - (c) who would be entitled to a Certificate of Eligibility, or
 - (d) in respect of whom the Presbytery of the bounds is otherwise satisfied that their orders are in accordance with the standards of the Church of Scotland;
- (3) probationers;
 - (4) Licentiates and Graduate Candidates;
 - (5) candidates for the ministry, including the Ordained Local Ministry, who have been duly recognised in terms of Act X 2004 or Act IX 2011;
 - (6) members of the diaconate;
 - (7) candidates for the diaconate;
 - (8) ministries development staff employed by the Ministries Council;
 - (9) readers; and
 - (10) persons selected and trained to a standard determined by the Presbytery of the bounds in accordance with a scheme or arrangement approved by the Presbytery.
8. (1) Employment in terms of section 7 above shall not necessarily entitle any person to receive a pulpit supply fee, such fees being payable only in accordance with regulations approved by the General Assembly.
 - (2) No person authorised to conduct worship in terms of subsection 7(10) shall be entitled to a fee, but shall receive reasonable expenses as determined from time to time by the Presbytery.
9. Notwithstanding section 7 above a Parish Minister may occasionally and for special reason invite a person not qualified in terms of the said section to conduct public worship provided that, when an invitation in terms of this section has been accepted the Parish Minister shall intimate the same in writing to the Clerk of the Presbytery within fourteen days.

10. Section 9 above may be construed to include, *inter alia*, the occasional conduct of public worship by an elder or elders of the congregation.
11. In an emergency when, for any reason, it becomes evident at or before the time appointed for public worship that the responsibility of the Parish Minister under this Act has not been discharged, it shall be the duty of the Session Clerk, whom failing the senior elder present, to lead the congregation in an act of devotion, or invite someone else to do so, and to report the circumstances to the Clerk of the Presbytery as soon as possible thereafter.

Use of Church Buildings

12. The Parish Minister has the following rights and responsibilities as regards use of church buildings:
 - (1) The place of worship and other ecclesiastical buildings connected with the Charge are at the disposal of the Parish Minister for the purposes of his or her office, subject only to the control of the Presbytery.
 - (2) The Parish Minister may use them and grant permission to others to use them for all purposes connected with the congregation or any of its organisations, and also for all purposes of an ecclesiastical or charitable nature, even if they be not connected with the congregation, subject to the control of the Presbytery.
 - (3) The Parish Minister shall not use the buildings nor grant the use of them for any other purposes without the consent of the Kirk Session, Deacons' Court, Committee of Management, or Congregational Board, as the case may be. In deciding for what uses the church may be granted the sacred character of the building shall be kept in view.
13. The Kirk Session, Deacons' Court, Committee of Management, or Congregational Board shall not be entitled to use the buildings for any purpose whatever without the consent of the Parish Minister, nor shall they grant the use of the buildings to others without his or her consent.

14. During a vacancy, or the time in which a Parish Minister has leave of absence from the Charge, the Interim Moderator of the Kirk Session shall have the same rights in the use of the church buildings as the inducted Parish Minister.
15. In congregations where provisions are made, either in the title-deeds of the property or in a constitution approved by the Presbytery with regard to the use of the church buildings which differ from what is set forth in sections 12 to 14 of this Act, the provisions of such title-deeds or constitution shall remain in force to the exclusion of this Act in so far as it differs from these provisions, unless and until these provisions shall be competently altered.

Engagement by Ministers of Word and Sacrament in Secular Employment

16. No Minister of Word and Sacrament inducted or introduced to a Charge shall apply for, accept or undertake any remunerative employment or office either within or outwith the jurisdiction of the Church without previously obtaining approval of the Presbytery of the bounds, unless such an appointment is made directly by the General Assembly.

The Parish Minister Precluded from the Office of Congregational Treasurer

17. No Parish Minister shall act as the Congregational Treasurer with respect to any of the congregations in the Charge.

Retirement of Ministers of Word and Sacrament

18. (1) Subject to subsection (4), a Minister of Word and Sacrament inducted or introduced to a Charge shall be inducted or introduced until the date of his or her seventy-fifth birthday, on which date his or her ministry shall terminate as if he or she had resigned his or her Charge and such date been appointed by the Presbytery of the bounds for the demission by the Minister of Word and Sacrament of his or her Charge.

- (2) Notwithstanding subsection (1), a Parish Minister inducted to a Charge on a Basis of Unrestricted Tenure, whose Charge is one where the Presbytery Plan anticipates adjustment at the next vacancy, shall be subject to review by Presbytery as follows:
 - (a) Where the Parish Minister was inducted to the Charge on the basis of an anticipated retirement age of 65, the Parish Minister shall be subject to the Presbytery's review at a point no later than six months before he or she reaches the age of eligibility for UK state pension. When the Parish Minister concerned does reach the age of eligibility for UK state pension, the Presbytery shall have the right to terminate tenure on the grounds of necessary adjustment, and
 - (b) Where the Parish Minister was inducted to the Charge on the basis of an anticipated retirement age of 70 (in the case of a Parish Minister inducted prior to 31 May 1995), the Parish Minister shall be subject to the Presbytery's review at a point no later than six months before he or she reaches the age of 70. When the Parish Minister concerned does reach the age of 70, the Presbytery shall have the right to terminate tenure on the grounds of necessary adjustment.
- (3) For the avoidance of doubt, a Parish Minister inducted to a Charge on a Basis of Reviewable Charge under section 12 of the Appraisal and Adjustment Act (Act VII 2003), does not have the right to remain in that Charge beyond the period of tenure specified in the said Basis where this prevents necessary adjustment.
- (4) On application by a Parish Minister, his or her tenure may be extended for an agreed period of time according to a process set out in Regulations made by the General Assembly, dealing with Continuing Ministry beyond the age of 75. Service of an application under the Regulations shall prevent the termination of the tenure of the

Parish Minister under subsection (1) until the application is determined.

Repeals

19. This Act shall come into force on XXX and Act II 2000 shall be repealed at that date.

Appendix D

DISCIPLINE OVERTURE

The General Assembly adopt the Overture the tenor whereof follows, and transmit the same to Presbyteries for their consideration under the Barrier Act, directing that returns be sent to the Principal Clerk not later than 31 December 2018.

Part 1 DEFINITIONS, INTERPRETATION AND PRELIMINARY MATTERS

1. For the purposes of this Act:

- (1) "Administrative Suspension" shall mean an instruction given, at any stage of proceedings in terms of this Act, by a Presbytery or any Committee or individuals holding delegated powers from Presbytery so to do, to a Respondent to abstain from the exercise of all of the functions of the office held by the Respondent until the final disposal of proceedings under this Act and "Administratively Suspended" shall be construed accordingly. For the avoidance of doubt, Administrative Suspension shall not constitute or form a part of any form of Censure.
- (2) "Adviser" shall mean a Minister, being a member of Presbytery, selected from a list maintained by the Legal Questions Committee, who acts as an adviser to an Assessor.
- (3) "Alternative Contact" shall mean the alternative contact to the Presbytery Clerk in terms of the Complaints Procedure.
- (4) "Assessor" shall mean (i) an Elder, being a member of a Kirk Session, who is legally qualified and has knowledge of Church Law, or (ii) a solicitor employed in the Church's Law

Department, or (iii) an investigator with experience of the investigation of professional misconduct: any such person in category (i), (ii) or (iii) being appointed from a panel of Assessors in terms of section 17(2), and all Assessors being appointed to the panel by the General Assembly on the nomination of the Nomination Committee.

- (5) "Auxiliary Minister" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).
- (6) "breach" shall mean material breach.
- (7) "Bullying" shall mean a course of conduct (i.e. conduct which occurs on at least two occasions) amounting to offensive, threatening, abusive, malicious, intimidating or insulting behaviour that may be an abuse or misuse of power, position or knowledge through means that undermine, humiliate, denigrate or injure the person concerned and which is behaviour occurring in circumstances where it would appear to a reasonable individual that it would amount to bullying of that person.
- (8) "Censure" shall have the meaning given to it in Part 10.
- (9) "Censure with consent" shall mean a Censure consented to by the Respondent.
- (10) "Complainer" shall mean a person, Committee or other body making a Disciplinary Complaint.
- (11) "Complaints Procedure" shall mean the complaints procedure operated by Presbyteries as initially approved by deliverance of the General Assembly of 2014 and as amended from time to time.
- (12) "Council" shall mean the Ministries Council or any Task Group or Committee of the Ministries Council.
- (13) "Deacon" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).

- (14) "Disciplinary Complaint" shall mean (i) a written allegation or allegations that a Disciplinary Offence has been committed or (ii) circumstances coming to the attention of Presbytery which indicate that a Disciplinary Offence may have been committed.
- (15) "Disciplinary Offence" shall have the meaning assigned to it in Part 4.
- (16) "Disciplinary Proceedings" shall mean those proceedings carried out in accordance with the provisions of Part 8 in respect of any Disciplinary Offence alleged to have been committed by a Respondent.
- (17) "Discipline Tribunal" shall mean a body of three or five persons drawn from the Judicial Panel and constituted to hear Disciplinary Proceedings under this Act, more particularly described in section 7.
- (18) "Elder" shall mean a person ordained as an elder (whether or not serving on a Kirk Session, save where otherwise specified in this Act).
- (19) "Graduate Candidate" shall have the meaning ascribed to it in the Selection and Training for Full-Time Ministry Act (Act X 2004).
- (20) "Harassment" shall mean unwanted physical, verbal or non-verbal conduct related to a Protected Characteristic which has the purpose or effect of violating the dignity of another person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person, declaring that in deciding whether conduct has that effect, there shall be taken into account the perception of that person, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- (21) "Investigatory Proceedings" shall mean those proceedings carried out in accordance with the provisions of Part 7 in respect of any Disciplinary Offence alleged to have been committed by a Respondent.
- (22) "Judicial Commission" means the Judicial Commission as defined in the Appeals Act (Act I 2014).
- (23) "Judicial Panel" shall mean the pool of persons from which shall be appointed (a) a Reviewer, and (b) the members to serve on the Discipline Tribunal and the Judicial Commission.
- (24) "Judicial Suspension" shall mean any suspension imposed as a Censure in terms of Part 10.
- (25) "Legal Aid Fund" shall mean the Fund maintained by the Legal Questions Committee in terms of the Legal Aid in Disciplinary Proceedings Regulations (Regulations X 2018).
- (26) "Licentiate" shall have the meaning ascribed to it in the Candidates, Licentiates and Probationers Act (Act XI 1994).
- (27) "Minister" and "Minister of Word and Sacrament" shall have the meanings respectively ascribed to them in the Registration of Ministries Act 2017 (Act II 2017).
- (28) "Office-Bearer" shall, for the purposes of this Act only, mean an individual who is serving on a Congregational Board, Deacons' Court or Board of Management, or any other body deemed by the Presbytery to form part of the governance arrangements of any congregation, or on any committee of any of these bodies or of a Kirk Session or Presbytery, and shall, for the avoidance of doubt, include all Clerks and Treasurers, whether or not such individuals are serving as voting members of any such governing body.
- (29) "Ordained Local Minister" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).
- (30) "Procedural Review" shall mean a procedural review carried out by a Reviewer in terms of sections 19(3), 22(2) or 27.
- (31) "Protected Characteristic" shall mean any of the following:

Age
 Disability
 Gender re-assignment
 Race
 Religion or belief
 Sex
 Sexual orientation

- (32) "Reader" shall have the meaning ascribed to it in the Readership Act (Act XVII 1992).
 - (33) "Referral" shall mean the referral by a Presbytery of a Disciplinary Complaint to an Assessor in terms of Part 5.
 - (34) "Register of Ministry" shall mean the Register referred to in section 2 of the Registration of Ministries Act (Act II 2017).
 - (35) "Respondent" shall mean a person referred to in section 10 against whom a Disciplinary Complaint has been made or has arisen.
 - (36) "Reviewer" shall mean a person selected from the Judicial Panel and appointed by the Convener or Vice-Convener of the Legal Questions Committee to carry out a Procedural Review.
 - (37) "Victimisation" shall mean subjecting another person to a detriment because that person has brought a Disciplinary Complaint under this Act, given evidence or information in connection with proceedings under this Act, or done any other thing for the purposes of or in connection with this Act, unless that person acted in bad faith in so doing.
2. For the purposes of this Act (a) the singular shall include the plural unless the contrary intention appears; (b) any reference to a "section" or a "Part" shall be to a section or Part of this Act, (c) any reference to "days" in relation to periods of time or time limits shall be to consecutive calendar days, and (d) any reference to an Act of the UK or Scottish Parliament shall include a reference to any subsequent modification, replacement or re-enactment thereof.
 3. Meetings of the Assessor and the Adviser or of the Discipline Tribunal may be held by conference

telephone call, video conference or the like electronic means and proceedings at any meeting held by such means shall be as valid as if the Assessor and Adviser or the members of such Tribunal and any other parties, recorded as attending such meeting, had all been physically present, in person, at a single geographic location.

4. No Assessor, Adviser or Reviewer shall:
 - (1) take part in any proceedings involving the Presbytery of which they are a member or in which the Kirk Session of which they are a member is situated; or
 - (2) be appointed to the Discipline Tribunal or a Judicial Commission in any single case or series of related cases in which they have acted as Assessor, Adviser or Reviewer, which proceeds against any Respondent in terms of this Act.
5. The rules of civil evidence in Scots Law shall apply to the conduct of any proceedings governed by this Act and the standard of proof required shall be the balance of probabilities. Where the Disciplinary Complaint is the same as, or substantially similar to, any charge brought against the Respondent in criminal law and the Respondent is proved to have been convicted of the offence in criminal law, by or before any court in the United Kingdom, then the Respondent shall be taken to have committed that offence, unless the contrary is proved.
6. (1) The Assessor may sist proceedings under this Act at any time, in whole or in part, in any of the following situations: (i) pending the outcome of any civil or criminal proceedings or relevant investigations which relate to the Complaint, (ii) due to the ill-health of the Respondent or of a material witness which, in the opinion of the Assessor, having taken such professional advice or considered such evidence as they consider appropriate, prevents the Respondent or material witness from taking part in such proceedings; or (iii) for any other reason which the Assessor deems appropriate.

- (2) Once a sist has been imposed, it shall be presumed to continue until such time as the circumstances leading to its imposition no longer pertain, but the appropriateness of the sist continuing shall be subject to review, upon request by the Respondent, at three-monthly intervals from the date of its imposition. Each such review shall be undertaken and decided upon by the Convener, whom failing the Vice-Convener, of the Legal Questions Committee, who shall have power to lift the sist upon cause shown by the Respondent. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.
7. The Discipline Tribunal shall be variously constituted as follows:
 - (1) In the circumstances of a matter proceeding under Part 8 (*Disciplinary Proceedings*), it shall mean a body of up to five persons, of whom at least one is a Minister or Deacon and one is an Elder, three persons being selected from the Judicial Panel together with a Convener and a Vice-Convener appointed in terms of section 16 of the Appeals Act (Act I 2014). In this case the quorum of the Tribunal shall be three persons, one of whom must be the Convener, or
 - (2) In the circumstances of a matter proceeding under Part 9 (*Accelerated Procedure*) it shall mean a body of up to three persons, comprising one Minister and one Elder selected from the Judicial Panel, together with a Convener appointed in terms of section 16 of the Appeals Act (Act I 2014). In this case the quorum of the Tribunal shall be two persons, one of whom must be the Convener.

The Solicitor of the Church shall normally serve as Secretary to the Discipline Tribunal but may appoint a Depute to act in his or her place in any particular case. The Secretary shall not be a member of the Discipline Tribunal.

8. Where an Assessor becomes unable to continue with consideration of and/or investigation of and/or

disciplinary proceedings in respect of a Disciplinary Complaint, then a new Assessor shall be appointed and the consideration and/or investigation and/or disciplinary proceedings shall continue, subject to all time limits which apply being recalculated to start again as if the Referral had been made on the date on which the new Assessor is appointed.

9. When, in the course of proceedings under the Local Church Review Act (Act I 2011) or the Congregations in an Unsatisfactory State Act (Act I 1988), the Presbytery receives a Disciplinary Complaint indicating that a Disciplinary Offence may have been committed by a Respondent, it may proceed in one of the following ways: (i) it may proceed simultaneously in terms of this Act, or (ii) it may resolve to initiate proceedings under this Act following the completion of the existing proceedings, or (iii) it may resolve to sist the existing proceedings and initiate proceedings under this Act.

Part 2 THOSE SUBJECT TO DISCIPLINE IN TERMS OF THIS ACT

10. The following shall be subject to discipline in terms of this Act:
 - (1) Ministers of Word and Sacrament;
 - (2) Licentiates;
 - (3) Graduate Candidates;
 - (4) Deacons;
 - (5) Readers;
 - (6) Candidates and Probationers in training for the Ministry of Word and Sacrament and Diaconate as referred to in the Selection and Training for Full-Time Ministry Act (Act X 2004);
 - (7) Candidates in training for the Readership as referred to in the Readership Act (Act XVII 1992);
 - (8) Elders;
 - (9) Office-Bearers;
 - (10) Persons holding Certificates of Eligibility issued under the Admission and Re-admission of Ministers Act (Act IX 2002).

Part 3 JURISDICTION

11. It is declared that any proceedings under this Act are part of the exclusive jurisdiction of the Church and in accordance with the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual, as hereby interpreted by the Church.
12. Where an individual against whom an allegation made in terms of this Act is an employee of any congregation or any Court or Committee of the Church, nothing in this Act shall prejudice the application of civil employment law.
13. For the avoidance of doubt, it is declared that nothing in this Act shall reduce the general power of Presbytery to impose an Administrative Suspension on any individual subject to its jurisdiction in terms of this Act, at any time.
14.
 - (1) Proceedings under this Act shall be initiated by the Presbytery having jurisdiction in terms of this section.
 - (2) Ministers of Word and Sacrament and Deacons shall be subject to the jurisdiction of the Presbytery with which they are registered on the Register of Ministry created by the Registration of Ministry Act (Act II 2017).
 - (3) Licentiates shall be subject to the jurisdiction of the Presbytery within the bounds of which is the congregation of which they are a member, which failing, the Presbytery of Edinburgh.
 - (4) Candidates and Probationers in training for the Ministry of Word and Sacrament and Diaconate shall be subject to the jurisdiction of the Presbytery which is supervising them, in terms of sections 18 and 19 of the Selection and Training for Full-Time Ministry Act (Act X 2004).
 - (5) Candidates in training for the Readership shall be subject to the jurisdiction of the Presbytery which appoints the regent referred to in section 2(e) of the Readership Act (Act XVII 1992).

- (6) Graduate Candidates shall be subject to the jurisdiction of the Presbytery which issued their Graduate Candidate's Certificate in terms of section 22 of the Selection and Training for Full-Time Ministry Act (Act X 2004).
- (7) Elders and Office-Bearers shall be subject to the jurisdiction of the Presbytery within the bounds of which is the congregation of which they are a member or in which they serve as an Office-Bearer.
- (8) Readers shall be subject to the jurisdiction of the Presbytery upon the Roll of which they appear.
- (9) Persons holding Certificates of Eligibility issued under the Admission and Re-admission of Ministers Act (Act IX 2002) shall be subject to the jurisdiction of the Presbytery within the bounds of which they normally reside, which failing, the Presbytery of Edinburgh.

15. Should a Disciplinary Complaint come to the notice of a Presbytery other than that having jurisdiction in terms of this Part 3, it shall communicate the same to the Presbytery having jurisdiction, together with all information pertaining thereto in its possession.

Part 4 DISCIPLINARY OFFENCES

16. "Disciplinary Offence" shall mean:
 - (1) conduct which is declared censurable by the Word of God;
 - (2) a breach of an Act, Regulation or Deliverance of the General Assembly;
 - (3) a breach of an established custom of the Church;
 - (4) a breach of an order or instruction of any court of the Church or Committee;
 - (5) a breach of a Respondent's vows of ordination;
 - (6) a refusal to accept, or an attempt to subvert, the authority of any court of the Church or Committee;

- (7) conduct unbecoming the office held by the Respondent in the Church or likely to reflect adversely on the Church or bring its name into disrepute;
- (8) conduct which is not in conformity with the law or practice of the Church and which constitutes direct or indirect discrimination in terms of the Equality Act 2010;
- (9) Harassment or Victimisation as defined in sections 1(20) and 1(36) respectively;
- (10) dishonest or deceitful behaviour;
- (11) Bullying;
- (12) conduct which results in the placing of the name of a Respondent on the Sex Offenders' Register or the Respondent's inclusion on the Children's List and/or the Adults' List kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007;
- (13) failure by an individual to advise the Church's Safeguarding Service of (a) any act, default or omission, or (b) any circumstances arising, bearing upon that individual's suitability to undertake Regulated Work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007;
- (14) other than as permitted in terms of this Act, the issuing by any person subject to this Act of any form of statement about, or details concerning, the alleged Disciplinary Offence, or participating in any interview or discussion with the media or publishing any material on social media regarding an alleged Disciplinary Offence, in all cases after the Presbytery receives notice of an alleged Disciplinary Offence and until the conclusion of any Disciplinary Proceedings and any appeals relating thereto; and
- (15) disobedience of an Instruction issued under section 40.

Part 5 REFERRAL

17. (1) Whenever a Disciplinary Complaint comes to the notice of the Presbytery, it shall be considered by the Presbytery Clerk (or the Alternative Contact), whom failing, any member of Presbytery holding delegated powers from Presbytery to act for the Presbytery in respect of the Complaints Procedure or otherwise holding delegated powers from Presbytery to deal with matters of discipline.
- (2) If, following consideration in terms of section 17(1), it is decided that the Disciplinary Complaint should be considered under this Act, the Presbytery shall appoint an Assessor and shall refer the consideration of such Disciplinary Complaint to such Assessor. Before making a decision that the Disciplinary Complaint should not be considered under this Act, the Presbytery Clerk shall seek the advice of the Principal Clerk.
- (3) Consideration shall also be given at this stage as to whether or not an Administrative Suspension should be imposed on the Respondent in terms of Part 6.
- (4) Where there is a Complainer, the Presbytery Clerk shall send written acknowledgement of the Disciplinary Complaint to the Complainer within seven (7) days of its receipt.
- (5) Once a Referral has been made, the following restrictions shall apply to a Respondent (with the exception of those Respondents referred to in section 10(9)) until such time as proceedings under this Act are finally disposed of:
 - (a) the Respondent shall not be entitled to demit his or her status or to resign from a Church appointment; a Minister of Word and Sacrament or a Deacon shall be permitted to demit his or her charge or to resign from a Church appointment, but if he or she does so, he or she shall remain under the jurisdiction of the Presbytery

- until proceedings under this Act are finally disposed of; and
- (b) the Council may not issue an extract of the Respondent's entry in the Register of Ministry if he or she seeks to leave the jurisdiction of the Presbytery.
- (6) The Presbytery Clerk shall write to the Respondent to confirm that a Disciplinary Complaint has been received, advising as to its general nature and confirming that a Referral has been made and in addition, shall confirm the matters referred to in sub-paragraphs (a) and (b) above of subsection (5). The Presbytery Clerk shall, at the same time, send to the Respondent copies of (a) this Act and (b) the Guidance for Respondents prepared in terms of Part 16 and shall notify the Secretary of the Council in writing that the Referral has been made.
- (7) Notwithstanding subsection (5) above, a Respondent may, provided that no appeal is being taken to the Judicial Commission and provided also that the procedure set out in section 33 of Act VIII 2003 is followed, demit status at any time after the Discipline Tribunal issues a decision on Censure in the Respondent's case.
- (8) At the same time as appointing the Assessor, the Presbytery shall make suitable arrangements for the provision of pastoral support for (i) the Respondent and his or her family, (ii) any Complainer(s), (iii) any witnesses in respect of the Disciplinary Complaint residing within the bounds of the Presbytery, (iv) the congregation and (v) any Office-Bearers involved in the Disciplinary Complaint. The Presbytery may call upon a neighbouring Presbytery and/or the Secretary of the Council to assist in the provision of pastoral support. The Presbytery Clerk shall make a written report on the arrangements, so made, to the Assessor, when appointed.
- (9) In the Assessor's report to the Presbytery in terms of section 19(1), the Assessor shall comment on the arrangements for pastoral support made by the Presbytery in terms of section 17(8), providing an assessment as to their adequacy and may raise any inadequacy with Presbytery during the course of his or her consideration of the Referral and may make suggestions as to how such inadequacy could be rectified.
- (10) Except insofar as provided herein, once an Assessor has been appointed, the Presbytery shall have no further part in the proceedings.
18. (1) The Presbytery shall also appoint an Adviser to work with the Assessor on the Disciplinary Complaint. The Adviser shall provide support to the Assessor and may be present at any interview conducted by the Assessor. Before taking any decisions under this Act, the Assessor shall consult with the Adviser.
- (2) The Assessor will consider the Disciplinary Complaint and, if necessary, obtain any additional information, to allow the Assessor to decide whether the Disciplinary Complaint falls into one or more of the following categories:
- (a) it is in a form which cannot sensibly be responded to, or
- (b) it is otherwise an abuse of process, or
- (c) it is frivolous or vexatious, or
- (d) it has no reasonable prospect of providing grounds for disciplinary action in terms of this Act, or
- (e) it would be more appropriately dealt with by the Presbytery under the Complaints Procedure, or
- (f) it is suitable to be dealt with in terms of the Alternative Dispute Resolution Processes Act 2014 (Act VI 2014) or otherwise by mediation, conciliation or facilitated conversation or similar processes, or
- (g) the Presbytery has no jurisdiction to consider the Disciplinary Complaint, or

- (h) it cannot be pursued because a Complainer is not willing to be identified to the Respondent, or is not willing to disclose a document to the Respondent and there is no other evidence supporting the Disciplinary Complaint.
19. (1) Within twenty eight (28) days of the receipt of the Referral by the Assessor, he or she shall decide whether the Disciplinary Complaint satisfies any of the criteria set out in section 18(2). The Assessor shall confirm this in a report sent to the Presbytery, the Complainer (if any) and the Respondent. Where the Assessor decides that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2), he or she shall also state whether the Disciplinary Complaint should be considered by Presbytery in terms of the Complaints Procedure. When the Assessor decides that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2) the Assessor shall, at the same time advise the Presbytery and the Complainer of their right to a Procedural Review.
- (2) For the avoidance of doubt, a decision by the Assessor that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2) shall not be subject to appeal or dissent and complaint or any other form of review, other than a Procedural Review carried out by a Reviewer.
- (3) With respect to a Procedural Review the following will apply:
- (a) A Procedural Review must be requested by the Presbytery or the Complainer within fourteen (14) days of the date upon which the Assessor reported his or her decision to the Presbytery and the Complainer.
- (b) A Procedural Review can be sought only on one or both of the following grounds: (a) that there was an irregularity in the process followed by the Assessor which materially influenced his or her decision; and/or, (b) that his or her decision was materially influenced by incorrect material fact.
- (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief, specific, numbered propositions, the grounds in subsection (b) above relied on by the Presbytery or the Complainer.
- (d) In the event that the Reviewer determines that one or both of the foregoing grounds have been established, he or she shall order a new Referral to be made to a different Assessor.
- (e) In the event that the Reviewer determines that neither of the foregoing grounds has been established, the decision of the Assessor shall be deemed to have become final.
- (f) The decision of the Reviewer as regards the Procedural Review shall be final and not subject to appeal, dissent and complaint or any other form of further review.

Part 6 ADMINISTRATIVE SUSPENSION

20. (1) At any time after a Disciplinary Complaint comes to the notice of the Presbytery, the Presbytery, or any Committee or individuals holding delegated powers from Presbytery so to do, shall be entitled, at its or their discretion, to impose an Administrative Suspension on the Respondent. This entitlement shall be without prejudice to the general power of Presbytery described in section 13.
- (2) In the event that the Respondent is a Minister and he or she has been Administratively Suspended, the Presbytery shall appoint an Interim Moderator to the Respondent's charge.

- (3) Without prejudice to section 20(1), where the Respondent is a Candidate or Probationer in terms of section 10(6) or 10(7), the Council may impose an Administrative Suspension on the Respondent in respect of their candidature or Probationer training, as the case may be, pending a decision in terms of section 20(1) by the Presbytery or any Committee or individuals holding delegated powers from Presbytery, as the case may be. The Secretary of the Council shall advise the relevant Presbytery of any Administrative Suspension so imposed.
- (4) If the Respondent falls within section 10(1), (2), (3), (4), (5), (6), (7) or (10) then the Presbytery shall advise the Secretary to the Council of the fact that an Administrative Suspension has been imposed.
- (5) Once an Administrative Suspension has been imposed, it shall be presumed to continue until such time as the circumstances leading to its imposition no longer pertain; but the Administrative Suspension shall be subject to review, upon request by the Respondent or the Assessor, at three-monthly intervals from the date of its imposition. Each such review shall be undertaken and decided upon by the Convener, whom failing the Vice-Convener, of the Legal Questions Committee, who shall have power to lift the Administrative Suspension upon cause shown by the Respondent or the Assessor. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.

Part 7 INVESTIGATORY PROCEEDINGS

- 21. (1) If the Assessor, following consideration in terms of section 19(1) decides to commence Investigatory Proceedings, he or she shall:

- (a) intimate in writing to the Respondent the terms of the Disciplinary Complaint and the nature of the evidence purported to exist in support of it;
- (b) invite the Respondent to provide a written answer to the Disciplinary Complaint to the Assessor within fourteen (14) days of the Respondent’s receipt of such intimation, always provided that the Respondent shall not be obliged to answer; and
- (c) give notice to the Presbytery of the commencement of Investigatory Proceedings.

- 22. (1) Within fourteen (14) days of the Assessor’s receipt of the Respondent’s written answer to the Disciplinary Complaint (or if no such written answer is received, within twenty eight (28) days of the likely receipt by the Respondent of the Assessor’s invitation in terms of section 21(1)(b)), the Assessor must decide which one of the following courses of action to take:

- (a) to determine that the Respondent has no case to answer in terms of this Act;
- (b) to offer the Respondent, with the consent and concurrence in writing, of a Convener (or Vice-Convener) of the Discipline Tribunal an opportunity to consent to a Censure, available for acceptance for a period of twenty eight (28) days, in order to conclude the Investigatory Proceedings, the Respondent having received legal advice; or
- (c) to continue to investigate the Disciplinary Complaint.

- (2) In the case of a decision by the Assessor in terms of section 22(1)(a), such decision shall not be subject to appeal or dissent and complaint or any other form of review, other than a Procedural Review carried out by a Reviewer on the same basis as set out in section 19(3). The Assessor shall confirm any decision in terms of section 22(1)(a) in a report sent to the Presbytery, the

- Complainer (if any) and the Respondent, which report shall include a statement of the reasons for his or her decision. In intimating his or her decision and the reasons, the Assessor shall advise the Presbytery and the Complainer (if any) of their right to a Procedural Review.
23. An offer of a Censure with consent, in terms of section 22(1)(b) shall be open for acceptance by the Respondent within a period of twenty eight (28) days from the date of issue and if not so accepted shall be deemed to be refused. If such an offer is accepted, the Censure with consent shall be recorded as is appropriate, depending on the person and on the type of Censure with consent, according to the general scheme specified in Part 10 and in each case, the recording of the Censure with consent shall conclude the Investigatory Proceedings, subject only to further procedure under Part 13.
24. (1) In the event that the Assessor decides to continue to investigate the Disciplinary Complaint in terms of section 22(1)(c), the Assessor shall carry out such investigations as he or she, in his or her sole discretion, deems necessary to determine whether a Disciplinary Offence may have been committed. Subject to subsection (2), such investigations shall be concluded within twenty eight (28) days of the date on which the Assessor's decision, in terms of section 22, is made.
- (2) The Convener, whom failing the Vice-Convener, of the Legal Questions Committee shall have power, on cause shown by the Assessor or the Respondent, to grant a further period or periods for completion of the investigation. Reasons for the Convener's or Vice-Convener's decision shall be given. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk. No second or subsequent extension shall be granted without the Respondent being given the opportunity to make representations as to whether or not the extension should be granted.
- (3) In all cases under this Act, the Assessor shall keep a record of the Investigatory Proceedings. The record shall comprise all evidence obtained by the Assessor including witness statements. Any of the interviews conducted by the Assessor may be digitally recorded at the option of the Assessor.
25. If, in the course of the Investigatory Proceedings, an Assessor becomes aware of further allegations against the Respondent, which may constitute a Disciplinary Offence, then the Assessor shall proceed to consider and, if appropriate, investigate such allegations in terms of this Part.
26. At the conclusion of the Assessor's investigation and before deciding whether to initiate Disciplinary Proceedings under Part 8, the Assessor shall again make known to the Respondent the substance of the Disciplinary Complaint being considered by the Assessor and the nature of the evidence existing in support of it and shall offer the Respondent the opportunity to make any answer thereto, in person or in writing; provided that he or she shall not be obliged to answer.
27. (1) Upon consideration of the Disciplinary Complaint and evidence submitted and of any answers given, the Assessor shall be entitled to resolve that no further investigation shall be carried out and that no Disciplinary Proceedings should be instituted if there is no *prima facie* case to answer. In that event, the Assessor shall confirm this in a report sent to the Presbytery, the Complainer (if any) and the Respondent, which report shall include a statement of the reasons for his or her decision. In intimating his or her decision, the Assessor shall advise the Presbytery and the Complainer (if any) of their right to a Procedural Review.
- (2) At such time, the Assessor may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in the Record referred to in section 24(3).
- (3) For the avoidance of doubt, a decision not to initiate Disciplinary Proceedings against the Respondent, in relation to the whole or any part

of a Complaint, shall not be subject to appeal or dissent and complaint or any other form of review other than a Procedural Review carried out by a Reviewer in terms of section 19(3).

- (4) In the circumstances where either (i) no Procedural Review is requested within the time frame applicable and that time frame has expired, or (ii) a Procedural Review takes place and the decision of the Assessor is upheld, then Presbytery shall thereafter recall any Administrative Suspension imposed in terms of sections 13 or 20.

PART 8 DISCIPLINARY PROCEEDINGS

28. (1) In the event that the Assessor decides to initiate Disciplinary Proceedings, he or she shall prepare (a) a Notice of Complaint setting forth the alleged Disciplinary Offence or Disciplinary Offences (hereinafter referred to as "Charge" or "Charges") in respect of which it is proposed that Disciplinary Proceedings should be commenced, and (b) a summary of the evidence, whether from witnesses, documents or otherwise, that is considered to support the Charge or Charges made.
- (2) The Notice of Complaint will run in the name of the Presbytery and will be in such form that, in respect of each Disciplinary Offence, there is set out the date(s), time(s) and place(s) of the Disciplinary Offence(s) and the facts necessary to constitute the Disciplinary Offence(s).
- (3) The Assessor shall also intimate to Presbytery his or her decision to initiate Disciplinary Proceedings.
29. (1) The Assessor shall initiate Disciplinary Proceedings by lodging with the Solicitor of the Church:
- (a) the Notice of Complaint;

- (b) a list of the names and addresses of the witnesses to be adduced by the Assessor;
- (c) a list of the productions to be put in evidence by the Assessor;
- (d) the summary of the evidence referred to in section 28(1)(b); and
- (e) a request to appoint a first diet and to grant a warrant to the Assessor for service of the Notice of Complaint and to cite the Respondent to attend the first diet.

- (2) The Solicitor of the Church shall notify the Convener and Vice-Convener of the Legal Questions Committee and arrange for the selection of a Discipline Tribunal and shall, thereafter, in the name of the Tribunal:
- (a) fix a date for the first diet, being a date not earlier than fourteen days after the expiry of the period specified for intimation and service; and
- (b) serve the Notice of Complaint on and intimate the first diet and a list of the names of those selected to serve on the Discipline Tribunal to, the Respondent within such period as he or she shall appoint.
- (3) The Solicitor of the Church shall, within the period fixed for intimation and service, intimate to the Respondent the date fixed for the first diet and shall serve upon him or her by both first class and "signed for" post or personally by means of a Sheriff Officer:
- (a) the Notice of Complaint and lists of witnesses and productions; and
- (b) a summary of the evidence specified in section 28(1)(b).

In intimating the date of the first diet, the Solicitor of the Church shall draw to the attention of the Respondent the provisions of section 32 as to failure to appear.

- (4) In the event that service of the Notice of Complaint has not been timeously or regularly effected, the Solicitor shall as aforesaid:
- (a) re-serve the Notice of Complaint as above; and
 - (b) fix a fresh date for the first diet, being a date not earlier than fourteen days after the expiry of the period specified for the fresh intimation and service.
30. (1) The first diet will be held before the Discipline Tribunal.
- (2) At the first diet the Respondent may challenge:
- (a) the competency or relevancy of the Notice of Complaint; or
 - (b) the constitution of the Discipline Tribunal:
- provided that, in respect of any challenge to the competency or relevancy of the Notice of Complaint, intimation of the ground of such challenge must be given to the Assessor and the Secretary to the Discipline Tribunal not later than twenty four (24) hours before the diet is due to be held, and any challenge to constitution shall be disposed of immediately, unless the Discipline Tribunal consider that the matter cannot be decided without proof.
- (3) At the first diet the Discipline Tribunal may:
- (a) adjourn the first diet for any reason;
 - (b) allow the Notice of Complaint to be amended by deletion, alteration or addition, so as to cure any error or defect in it or meet any objection to it, on such conditions as they think fit;
 - (c) sustain or repel any challenge to the competency or relevancy of the Notice of Complaint in whole or in part;
 - (d) defer consideration of such challenge until after proof,
- (e) deal with any practical and/or procedural matters related to the Notice of Complaint which can usefully and expeditiously be dealt with at the first diet. The Discipline Tribunal shall have the power to make any order or determination which is just and reasonable, which order or determination shall be final.
- (4) After disposal or deferment of any challenge referred to in subsection (2) above, the Respondent shall be required to state whether he or she admits or denies each of the Charges, if any, which remain on the Notice of Complaint.
- (5) Where the Respondent admits all the individual Charges brought, the Discipline Tribunal shall, after hearing and considering any statement by the Assessor and any statement by or on behalf of the Respondent in mitigation, pass such Censure upon the Respondent as appears to it appropriate or discharge the Respondent and shall record its decision in a document signed by the Convener. The provisions of section 37(1) shall apply.
- (6) Where the Respondent denies some, or all, of the Charges brought, the Discipline Tribunal will appoint a date for the proof of those charges which are denied and defer consideration of the question of Censure in respect of any Charges which are admitted, until close of the proof; provided that the Assessor may:
- (a) accept any denial of any individual Charge; or
 - (b) accept an admission of an individual Charge in part;
- in which case the proof will be confined to those Charges which are denied and which denial is not accepted by the Assessor.
- (7) The date appointed for proof shall be not less than twenty eight (28) days nor more than fifty six (56) days after the first diet or any adjournment thereof, but the Discipline Tribunal

- shall have power, upon cause shown by either party, to fix a date outwith that period, or to adjourn the proof diet.
- (8) Where the Discipline Tribunal has appointed a date for proof, it may make an Order requiring the Respondent to intimate to the Secretary to the Discipline Tribunal and to the Assessor, within such period as they shall specify, a list of the names and addresses of the witnesses to be adduced and a list with copies of the productions to be put in evidence by him or her.
- (9) Where (a) the Respondent has intimated in writing to the Assessor and to the Secretary to the Discipline Tribunal (i) that there is no challenge in terms of section 30(2) and (ii) that the Charge or Charges on the Notice of Complaint are all denied, and (b) both the Assessor and the Respondent intimate in writing to the Secretary to the Discipline Tribunal that there are no other matters which they wish to raise at the First Diet, it shall not be necessary to hold a First Diet and instead the Convener, Vice-Convener and Secretary of the Discipline Tribunal shall appoint a date for the proof of the Charge or Charges and make any Order in terms of section 30(8).
31. The first diet and proof shall take place in public except (a) where either the Assessor or the Respondent request that and show cause why, the hearing, or part thereof, should be held in private; or (b) where the hearing of evidence from any person, or narration of facts thereof, in the opinion of the Discipline Tribunal, is likely to prejudice morals or public order, to affect adversely the interests of justice or the private life of the parties or in any other special circumstances where publicity would prejudice the interests of justice, provided that, in any event, the Discipline Tribunal shall restrict publicity only to the extent which it deems to be strictly necessary.
32. If a party fails to attend or be represented at the time and place fixed for the proof, without cause shown, the Discipline Tribunal may (a) adjourn the proof to a later date; (b) if that party is the Assessor, dismiss the Notice of Complaint; or (c) if that party is the Respondent, proceed to hear the proof in his or her absence, to reach a decision thereon and if appropriate, to pass Censure.
33. (1) Witnesses shall be required by the Convener to take the oath or to affirm prior to giving evidence.
- (2) The proceedings at the proof shall be digitally recorded.
- (3) If produced by either party, the notices issued by the Assessor in terms of section 21(1)(a) and/or section 23 and any answers thereto by the Respondent, shall be admissible in evidence.
- (4) In subsection (2) “the proceedings at the proof” shall, unless the Discipline Tribunal directs otherwise, mean the whole proceedings to the close of the proof, including, without prejudice to that generality: (a) discussions on all matters arising in the course of the proof and the decision of the Discipline Tribunal on any such matter, (b) the evidence led at the proof, and (c) the speeches of the parties or their solicitors on their behalf.
34. Each party shall be entitled to give evidence, to call witnesses, to question any witness and to address the Discipline Tribunal, provided that the Respondent shall have the right to speak last.
35. Subject to sections 33 and 34, the conduct of the proof shall be in such manner as the Discipline Tribunal considers most appropriate for the determination of the issues before it and to the just handling of the proceedings.
36. (1) No proof shall fail, or the ends of justice be allowed to be defeated, by reason only of any discrepancy between the Notice of Complaint and the evidence.
- (2) It shall be competent, at any time prior to the decision of the Discipline Tribunal, unless the Discipline Tribunal see just cause to the contrary, to amend the Notice of Complaint by deletion, alteration or addition, so as to:

- (a) cure any error or defect in it;
- (b) meet any objection to it; or
- (c) cure any discrepancy or variance between the Notice of Complaint and the evidence,

provided that no amendment to the Notice of Complaint may change the character of the Charge or Charges.

- (3) If it appears to the Discipline Tribunal that the Respondent may, in any way, be prejudiced in his or her defence on the merits of the Charges by any amendment made under this section, the Discipline Tribunal shall grant such remedy to the Respondent by adjournment, or otherwise, as appears to the Discipline Tribunal to be just.
37. (1) At the close of the proof, the Discipline Tribunal shall give its decision on whether and if so to what extent, each Charge on the Notice of Complaint has been established and the decision shall be recorded in a document signed by the Convener, provided that the Discipline Tribunal may take time to consider its decision and adjourn the diet of proof to a later date for that purpose.
- (2) Upon giving its decision and, in the event of any Charge being found to be established or admitted (including, without prejudice to that generality, those Charges admitted and deferred in terms of section 30(6)), after hearing and considering any statement by the Assessor and the Respondent in mitigation, the Discipline Tribunal shall pass such Censure, if any, upon the Respondent as appears to it appropriate according to the circumstances of each charge. In determining the appropriate Censure, no account shall be taken of any prior period of Administrative Suspension.
 - (3) After giving its decision in terms of subsection (1), the Discipline Tribunal shall set forth in a document (a) those findings in fact which it has made and (b) the Censure, if any, which it has imposed, giving reasons for both elements of its decision. The Discipline Tribunal shall also record

the majority by which its decision in respect of (i) each Charge, and (ii) Censure, or absolute discharge, was reached.

- (4) The Secretary of the Discipline Tribunal shall send the documents, referred to in sections 37(1) and 37(3), to each of the parties, the Session Clerk(s) of the congregation(s) concerned, the Presbytery Clerk and the Principal Clerk of the General Assembly and shall make them available for public inspection.

Part 9 ACCELERATED PROCEDURE WHERE THE RESPONDENT DESIRES TO ADMIT ALLEGATIONS

38. (1) If, at any stage of proceedings prior to the service of a Notice of Complaint, the Respondent indicates that he or she wishes to admit all, or any, of the allegations made against him or her, he or she shall be entitled so to intimate to the Assessor. Said admission must be in writing and signed by the Respondent. It should include a statement by the Respondent that he or she has received legal advice on the matter. The admission shall not be accepted by the Assessor in the absence of a statement that legal advice has been received. In the event that the Assessor is willing to accept the said admission, either immediately or after making such other enquiries or investigations he or she considers appropriate, the Assessor shall, as soon as practicable, proceed to adjust and agree a Joint Minute with the Respondent, or his or her solicitor. The said Joint Minute, which shall be signed by or on behalf of both parties, shall set out:
- (a) the Disciplinary Offence or Disciplinary Offences which are admitted;
 - (b) an agreed summary of the material facts; and
 - (c) such other information as it is agreed should be before the Discipline Tribunal to assist it in reaching an appropriate disposal of the case.

In the event that the Assessor is either unwilling to accept the said admission or, following upon discussions with the Respondent or his or her solicitor, he or she concludes that it will not be possible to agree the terms of the Joint Minute, he or she shall be entitled to resume their investigations, and if appropriate, proceed to prosecute the case in accordance with the other provisions of this Act.

- (2) The Assessor shall, after signature thereof, transmit the Joint Minute to the Solicitor of the Church, who shall proceed to notify the Convener and Vice-Convener of the Legal Questions Committee and arrange for the selection of a Discipline Tribunal. The Solicitor shall thereafter, in name of the Tribunal, fix a date for a diet before the Tribunal, being a date not earlier than fourteen (14) days after the date of intimation thereof. The Solicitor shall intimate the said date to the Assessor and the Respondent and his or her solicitor.
- (3) At the said diet, the Discipline Tribunal shall, after hearing and considering any statement by the Assessor and any statement by the Respondent in mitigation, pass such Censure upon the Respondent as appears to it appropriate or discharge the Respondent and shall record its decision, with brief reasons therefor, in a document signed by the Convener. The Tribunal shall be entitled *inter alia* to take into account the fact that an early plea was made and mitigate any Censure as it sees fit. In determining the appropriate Censure, no account shall be taken of any prior period of Administrative Suspension.
- (4) In the event that the Respondent at the diet withdraws or modifies, to any extent, the admission previously made to all, or any, of the Disciplinary Offences, unless this is accepted by both the Assessor and the Tribunal, the diet shall be adjourned and thereafter the case shall proceed, as directed by the Tribunal, in accordance with the other provisions of this Act.

Part 10 CENSURES

39. The Discipline Tribunal shall dispose of all discipline cases as seems appropriate to it. In reaching a decision as to a suitable Censure, it shall not take into account any prior period of Administrative Suspension. It shall, however, take into account any previous Censures imposed on the Respondent by the Discipline Tribunal or any matter, which it considers relevant, in any personal file for the Respondent, held by the Council, which shall be made available to it by the Secretary of the Council.
40. The Censures available to the Tribunal, in respect of any Respondent, shall comprise the following or any combination thereof:
 - (1) **Ministers of Word and Sacrament and Deacons**
 - (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
 - (a) the Presbytery and recorded by it in a record apart, and
 - (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.
 - (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:
 - (a) the Presbytery and recorded by it in a record apart; and
 - (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

(iii) **Suspension** from the status and functions of ministry either (a) for a fixed period of up to three years^[1], or (b) without limit of time, but subject to a minimum period of suspension. In all cases, suspension will result in the re-categorisation of the Respondent to Category S in the Register of Ministry and suspension may only be lifted in accordance with section 28 of the Registration of Ministries Act (Act II 2017) upon application by the Respondent. In the event of an individual, who is suspended, having his or her pastoral tie severed, in no circumstances shall he or she be eligible to be re-appointed to the same charge.

(iv) **Removal** of the status and functions of ministry. In accordance with section 34 of the Registration of Ministries Act (Act II 2017), the Respondent's name shall immediately be removed from the Register of Ministry and recorded in List D. In all cases, restoration of status can only be sought through application in accordance with the Admission and Readmission of Ministers Act (Act IX 2002). No such application may be lodged until a period of at least four years has elapsed since the date of removal of the Respondent's status and functions.

(2) **Graduate Candidates**

(i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

(ii) **Suspension** from status for a specified minimum period of up to three years, subject to restoration

by the Council in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The Council shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.

(iii) **Removal** of status, subject to restoration by the Council in consultation with the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal of such status. The Council shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(3) **Licentiatees**

(i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (a) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence

(ii) **Suspension** from the Roll of Licentiatees for a specified minimum period of up to three years, subject to restoration by the Council, in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The Council shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.

(iii) **Removal** from the Roll of Licentiatees, subject to restoration by the Council, in consultation with

the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal from the Roll. The Council shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(4) **Candidates and Probationers**

(i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

(ii) **Suspension** from status for a specified minimum period of up to three years, subject to restoration by the Council in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The Council shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.

(iii) **Removal** of status, subject to restoration by the Council in consultation with the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal of such status. The Council shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(5) **Readers**

(i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

(ii) **Suspension** from the status and duties of the Readership for a specified minimum period of up to three years, subject to restoration by the Presbytery (but only with the agreement of the Council) upon petition by the Respondent following the expiry of such period. In considering whether the suspension shall be lifted, the Council shall take into account the length of suspension served and may insist on such discernment, assessment and training processes and placements as it sees fit.

(iii) **Removal** of the status and duties of the Readership, subject to restoration by the Presbytery (but only with the agreement of the Council) upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed from the date of removal of status and duties. In considering whether the petitioner should be restored to such status and duties, the Council shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.

(6) **Elders and other Office Bearers**

(i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate.

Such instruction shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (ii) **Suspension** from membership of a Kirk Session and from holding any other office within a congregation for a specified minimum period of up to three years, subject to restoration by the Presbytery, with the agreement of the Kirk Session, upon petition by the Respondent following the expiry of such period.

Such suspension shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

An Elder, having been restored by Presbytery following suspension and being invited to become a member of another Kirk Session (i.e. not the one from which he/she was suspended), shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her suspension and may only be so admitted if the Kirk Session in question then agrees to proceed.

- (iii) **Removal** from the status and office of Elder, subject to restoration by the Presbytery with the agreement of the Kirk Session upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed from the date of removal of status and office.

Such removal shall be reported by the Tribunal to:

- (a) the Kirk Session, and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

A person, having had the status of Elder restored following removal and being invited to become a member of another Kirk Session (i.e. not the one from which he/she was removed) shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her suspension. They shall not accept such an invitation until a period of at least four years has elapsed since their removal from such status.

- (iv) In the case of Office Bearers who are not Elders, **Removal** from a particular office held.

Such removal shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

An Office Bearer who is not an Elder and who is subsequently invited to take office in another congregation, shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her removal and may only be appointed to that office if the Kirk Session in question then agrees to it.

- (7) **Persons holding Certificates of Eligibility**

- (i) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and

- (b) the Secretary of the Council and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (ii) **Removal** of the Certificate of Eligibility, subject to grant of a new Certificate of Eligibility in terms of the Admission and Readmission of Ministers Act (Act IX 2002). Such removal shall be reported by the Tribunal to the Secretary of the Council. No application for a new Certificate of Eligibility may be lodged until a period of at least four years has elapsed from the date of removal of the previous Certificate of Eligibility.

Part 11 DISCIPLINE TRIBUNAL: ADDITIONAL POWERS AND RULES OF PROCEDURE

- 41. Where, in the view of the Discipline Tribunal, it is necessary to do so in the interests of justice, the Tribunal shall have power to order either party to produce, within such period as the Tribunal shall consider reasonable, any document or other article in that party's possession and any such document or other article shall be a Production in the proceedings and may be founded upon. Such a power shall be exercisable at any time up to the conclusion of the Proof.
- 42. The Discipline Tribunal may relieve a party from the consequences of a failure to comply with a provision of this Act shown to be due to mistake, oversight or other excusable cause, on such conditions as the Tribunal thinks fit.
- 43. The Discipline Tribunal shall have power to make regulations concerning the practice and procedure to be followed in any proceedings brought before the Discipline Tribunal, in terms of this Act, provided that such regulations shall be laid before and be subject to alteration, revocation, amendment or modification by the General Assembly.

- 44. No member of the Discipline Tribunal shall participate in any proceedings brought by a Presbytery of which he or she is a member or within the bounds of which there is a congregation of which he or she is a communicant member. This section shall not apply to the Solicitor of the Church.

- 45. Any decision of the Discipline Tribunal may be taken by a majority of its members.

Part 12 APPEALS

- 46. (1) If either the Assessor or the Respondent is dissatisfied with any decision of the Discipline Tribunal, they may appeal to the Judicial Commission in terms of the Appeals Act (Act I 2014). No right of appeal or dissent and complaint shall be allowed in respect of any act or decision done or taken in terms of this Act, otherwise than in accordance with the provisions of this Act or the Appeals Act (Act I 2014).
- (2) In the case of any appeal against the severity of Censure, taken by any party, it shall be open to the Judicial Commission to vary the Censure in the direction of greater severity or greater leniency. In varying any Censure, no account shall be taken by the Judicial Commission of any prior period of Administrative Suspension.

Part 13 IMPLEMENTATION OF DECISION/CENSURE AT PRESBYTERY

- 47. The Presbytery shall meet within not less than twenty-one (21) and not more than thirty-five (35) days after receiving intimation of the written decision of the Discipline Tribunal and shall implement the decision of the Discipline Tribunal. The Presbytery shall similarly meet to take appropriate steps after a Respondent accepts a Censure with consent. If the Respondent is a parish minister:
 - (1) In the event that the decision has not involved Judicial Suspension or removal from office, it shall
 - (a) lift any Administrative Suspension upon the individual concerned;
 - (b) relieve the Interim

Moderator of duty; and (c) undertake such steps in relation to other individuals and superintendence of its members and congregations as it finds necessary.

- (2) In the event that the decision has involved a period of Judicial Suspension of less than six months, the Presbytery shall, at its meeting, confirm the appointment of an Interim Moderator or make a new appointment and shall undertake such steps against other individuals and superintendence of its members and congregations as it finds necessary.
- (3) In the event that the decision has involved a period of Judicial Suspension of six months or more, or the removal of status of the Respondent, then: (i) the pastoral tie shall be severed; (ii) any parish of which the Respondent was minister shall be deemed to have become vacant on the date on which the written decision of the Discipline Tribunal was issued and (iii) any other ordained appointment which the Respondent held shall terminate on that date. The Presbytery shall, at its meeting, confirm the foregoing matters and it shall also confirm the appointment of an Interim Moderator or make a new appointment and shall undertake such steps against other individuals and superintendence of its members and congregations as it finds necessary.

In the event of an appeal being taken to the Judicial Commission against the decision of the Discipline Tribunal, (a) a Respondent, who is a parish minister, shall be entitled to remain in occupation of the manse pending the outcome of the appeal, and (b) the Presbytery shall meet again not less than twenty-one (21) and not more than thirty-five (35) days after receiving intimation of the written decision of the Judicial Commission and shall implement the decision of the Judicial Commission. The foregoing sections of this section 47 shall then apply *mutatis mutandis*. Where the decision of the Judicial Commission involves a change to a Censure imposed on a Respondent, who is a parish minister, (a) the Presbytery shall implement the foregoing sections of this section 47 so far as

practicable and may seek the advice of the Principal Clerk as to dealing with any practical consequences of the Judicial Commission's decision, and (b) where that change is from a Judicial Suspension of six months or more or a removal of status to a Judicial Suspension of less than six months such that the pastoral tie would not have been severed, then the Respondent shall be entitled to be compensated for stipend which should have been paid to him or her for the period from the date of the Discipline Tribunal's decision until the earlier of (a) six months after the date of the Judicial Commission's decision and (b) the date upon which the Respondent takes up remunerated employment or office.

Part 14 REPRESENTATION

48. The Assessor and the Respondent may be represented by a solicitor at any stage of the Investigatory Proceedings, Disciplinary Proceedings or appeal.

Part 15 EXPENSES

49. A Respondent shall be entitled to apply for financial assistance towards the costs of legal representation (a) where a Censure with consent is being accepted, and (b) in the conduct of Disciplinary Proceedings under Part 8 and any appeal following thereon, in terms of the Legal Aid in Disciplinary Proceedings Regulations (Regulations X 2018).

Part 16 GUIDANCE ON THE IMPLEMENTATION AND OPERATION OF THIS ACT

50. The Legal Questions Committee shall issue Guidance on the implementation and operation of this Act, which shall be reviewed by it, from time to time.

Part 17 ADMINISTRATIVE SUPPORT FOR ASSESSORS

51. In cases where administrative assistance is provided to an Assessor, any cost incurred will normally require to be met by the Presbytery in question, although in cases where a Presbytery does not hold sufficient funds, application may be made via the Principal Clerk to the Legal Aid Fund.

Part 18 COMMENCEMENT DATE AND SAVING PROVISIONS

52. This Act shall come into force on *[date the Overture is passed at the General Assembly of 2019]*. Where a Special Committee of Presbytery was appointed under Act III 2001, Act IV 2007, Act V 2007 or Act I 2010 prior to *[relevant date]* and has served a Notice of Complaint upon a Respondent before *[relevant date]*, such a matter shall continue until final disposal (including any appeal) in accordance with the law in force immediately before *[relevant date]*. Otherwise all disciplinary matters, whether new or ongoing, shall from *[relevant date]* be dealt with under the provisions of this Act. Any disputes as to what that shall mean in practice for any particular matter shall be resolved by the Convener and Vice-Convener of the Legal Questions Committee, upon application by any of the Special Committee, an Assessor or the Respondent, as the case may be, and the decision of the Convener and Vice-Convener shall be final and binding. In making such decision, the Convener and Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.

Part 19 CONSEQUENTIAL AMENDMENTS

53. *This table of proposed amendments to other legislation has been inserted to give a general guide at this stage. A more sophisticated set of amendments will be drafted for the final Act.*

NAME OF ACT	NUMBER & YEAR	SECTIONS	PROPOSED CHANGES
Congregations in Unsatisfactory State	Act I 1988	17	Replace reference to Act III 2001 with reference to the new Discipline Act.
Church Courts	Act III 2000	37(1)	Replace reference to Act I 2010 with reference to the new Discipline Act.
Discipline of Ministry	Act III 2001		This Act would be repealed.
Co-operation between Presbyteries	Act VI 2002	2	Replace references to Act III 2001, Acts IV & V 2007 and Act I 2010 with reference to the new Discipline Act.
Admission and Re-admission of Ministers	Act IX 2002	4(2)	Replace reference to Act III 2001 with reference to the new Discipline Act.
Vacancy Procedure	Act VIII 2003	3(b) and 18(8)	Replace reference to Act III 2001 with reference to the new Discipline Act.
Kirk Session Meetings	Act VI 2004	1(a)	No change required.
Protection against Bullying	Act IV 2007		This Act would be repealed.
Protection against Discrimination	Act V 2007		This Act would be repealed.
Discipline of Elders, Readers and Office Bearers	Act I 2010		This Act would be repealed.
Deacons Act	Act VIII 2010	7	No change required.
PVG	Act VII 2011	4, 5 & 9	Replace reference to Act III 2001 with reference to the new Discipline Act.
Appeals Act	Act I 2014	4(3)	Replace references to Act III 2001, Act IV 2007, Act V 2007 and Act I 2010 with references to the new Discipline Act.
		Schedule 2 para 16.1	Replace reference to Act III 2001 with reference to the new Discipline Act and the new Legal Aid in Disciplinary Proceedings Regulations.
Registration of Ministries Act	Act II 2017		This Act would need to be conformed to the new Discipline Act.

Appendix E

X LEGAL AID IN DISCIPLINARY PROCEEDINGS REGULATIONS

EDINBURGH, XX MAY 2018, SESS. X

Definitions

1. In these Regulations, the following definitions apply:

- (1) "Applicant" shall mean a person who is subject to discipline in terms of the Discipline of Ministry Act (Act III 2001) ("the Act"), against whom disciplinary proceedings have been initiated in terms of Part 4 of the Act and who is an applicant for legal aid;
- (2) "Assisted Person" shall mean a person in respect of whom a Certificate is in force and, with reference to Rule 9 of Part One of the Schedule, and in respect of costs incurred before notice of the discharge or revocation of a Certificate is received by his or her solicitor, includes the person in respect of whom that Certificate was issued;
- (3) "Certificate" shall mean a certificate issued by the Sub Committee in terms of Regulation 6 below;
- (4) "Committee" shall mean the General Assembly's Legal Questions Committee;
- (5) "costs" shall mean the legal fees charged and outlays incurred (including any fees and expenses reasonably and necessarily incurred in relation to potential or actual witnesses) by the solicitor referred to in Rule 3(2) or 8(5);
- (6) "Counsel" includes a solicitor advocate;
- (7) "Fund" shall mean the Legal Aid Fund maintained by the Committee in accordance with Regulation 2 below;
- (8) "legal aid" shall mean representation by the said solicitor and, where appropriate, by counsel or by a solicitor or counsel referred to in Rule 19(b) in any proceedings mentioned at subsection (1)

above, on the terms provided for in these Regulations, and includes all such assistance as is usually given by a solicitor or by counsel in the steps incidental to such proceedings;

- (9) "Minister" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017);
 - (10) "partner" means someone with whom an Applicant or Assisted Person lives as a couple, whether or not they are married and whether of the same or different sex;
 - (11) "Schedule" shall mean the schedule in three parts attached to these Regulations;
 - (12) "Secretary" shall mean the Secretary to the Sub Committee;
 - (13) "Sub Committee" shall mean a Legal Aid Sub Committee consisting of the Convener, Vice-Convener and one other member of the Committee. At least one member of the Sub Committee shall require to be legally qualified. The Depute Solicitor of the Church shall normally act as Secretary to the Sub Committee but shall not be a member thereof.
2. The Committee shall maintain the Fund, which shall be administered on behalf of the Committee by the Sub Committee. Subject to and in accordance with the provisions of these Regulations, including the Rules of Procedure set out in Part One of the Schedule and any supplementary rules made by the Committee in terms of Regulation 11, the Sub Committee may make such payments of costs out of the Fund as it may authorise by Certificate.
 3. An Applicant shall be entitled to apply to the Sub Committee for legal aid in respect of legal costs incurred by him or her in relation to disciplinary proceedings initiated in terms of Part 4 of the Act and any appeal following thereon. Any award shall be restricted to the cost of work undertaken after the initiation of such disciplinary proceedings in terms of Part 4 of the Act.

4. Before deciding whether to grant any legal aid and, if so, to what extent, the Sub Committee shall have regard to all the circumstances of the case including:-
 - (a) the nature of any right or interest of the Applicant which is at stake in the proceedings and whether such right or interest is of the nature of a civil right; and
 - (b) if so, whether, in the whole circumstances of the case, legal representation is necessary to enable the Applicant to receive a fair hearing; and
 - (c) having regard to financial resources available to the Applicant (including, as appropriate, the financial resources of the Applicant's partner and whether help is available or likely to become available from another source such as a trade union or insurance company), whether the Applicant could, without financial hardship, afford such representationand legal aid shall not be granted if it appears to the Sub Committee that the Applicant could, without undue financial hardship to him or her or his or her dependants, afford to proceed without such assistance.
5.
 - (a) Legal aid shall not be granted to an Applicant who does not satisfy the capital and income eligibility criteria set out in Parts Two and Three of the Schedule^[2].
 - (b) (Legal aid shall be granted in accordance with the sliding scale of disposable income and capital and subject to the contributions by the Assisted Person set out in Part Two of the Schedule.
 - (c) The legal aid payable from the Fund shall be limited to costs, or a contribution towards costs, up to the maximum levels of authorised expenditure agreed by the Sub Committee from time to time. Financial assistance with legal fees shall be limited to the costs or part of the costs of legal advice or representation by a solicitor or counsel and shall be paid direct to the solicitor referred to in Rule 3(2) of Part One.
 - (d) The Committee shall from time to time review (i) the capital and income eligibility criteria (ii) the sliding scale of disposable income and capital (iii) the level of contributions by the Assisted Person and shall be entitled to adjust each of these as it deems appropriate and shall report any adjustments made to the following General Assembly.
6. The Sub Committee may issue a Certificate for the payment of the costs, or part of the costs, incurred by the Assisted Person subject to such conditions specified in the Certificate as the Sub Committee thinks fit. Without prejudice to the foregoing generality, the Sub Committee may issue a Certificate for:-
 - (a) The payment of a contribution towards costs of an amount specified in the Certificate; or
 - (b) The payment of costs subject to a contribution from the Applicant of an amount so specified; or
 - (c) The payment of such proportion of costs as may be so specified; or
 - (d) The payment of the costs of, or a specified proportion of the costs of, such part of the proceedings as may be so specified, whether by reference to issues in or stages of those proceedings.
7. Where on any application the Sub Committee considers that legal aid should not be granted, the Sub Committee before making a final decision shall afford the Applicant an opportunity of making representations, whether in writing or orally and whether in person or by his or her solicitor or counsel with respect to the application. For the avoidance of doubt, no payment from the Fund shall be made in respect of the making of such application.
8. The Secretary shall notify the Applicant and his or her solicitor in writing of the Sub Committee's decision on his or her application for legal aid, and of the grounds for that decision.
9. Where an application for legal aid is refused, no further application for legal aid may be made by the same Applicant in relation to the same proceedings unless it

contains or is accompanied by further information showing a material change of circumstances.

10. (a) A decision made in terms of these Regulations by the Sub Committee to refuse an application for legal aid shall not be subject to appeal or dissent and complaint or any other form of review, other than a procedural review carried out by another sub-committee of the Committee (the "Review Committee"), established for that purpose, consisting of three of its members, one of whom shall act as Convener and at least one of whom shall be qualified to practice as a lawyer.
- (b) Such a review must be requested by the Applicant within fourteen days of the date on which the Sub Committee intimated its decision to the Applicant and can be sought only on one or more of the following grounds:
 - (i) that there was an irregularity or breach of procedure or of the principles of natural justice in the process followed by the Sub Committee which materially influenced its decision; and/or
 - (ii) that its decision was materially influenced by some incorrect material fact.
- (c) Such a request shall be made by sending or delivering a written request to the Principal Clerk and such request shall also state, in brief, specific numbered propositions, the grounds which the Applicant considers justify a procedural review taking place.
- (d) In the event that the Review Committee determines that one or both of the foregoing grounds have been established, it shall remit the matter back to the Sub Committee with an instruction to reconsider its original decision in the light of the findings of the Review Committee.
- (e) In the event that the Review Committee determines that neither of the foregoing grounds has been established, the decision of the Sub

Committee shall be deemed to have become final.

- (f) The decision of the Review Committee shall be final and not subject to appeal, dissent and complaint or any other form of further review.
11. The Committee may make such further rules as it considers necessary or desirable for giving effect to, or for preventing abuses of, these Regulations and rules made under this subsection may in particular make provision:
 - (a) as to any further procedure to be observed in relation to an application for legal aid including the design and content of the application form;
 - (b) as to the information to be furnished by any Applicant applying for or receiving legal aid and as to the provision of information by any solicitor acting for any such person; and
 - (c) enabling the Sub Committee to authorise a payment to account of legal expenses incurred by the Applicant in appropriate circumstances.

Schedule

Part One - Rules of Procedure

GENERAL PROVISIONS

1. Meetings and procedure of the Sub Committee

- (1) The quorum for meetings of the Sub Committee shall be two members.
- (2) The business of the Sub Committee may, if the Convener so directs and none of the other members objects, be carried out by correspondence (by letter or email) or by conference telephone call, video conference or the like electronic means.

2. Notification of issue, amendment, discharge or revocation of Certificate

Where any Certificate or any notice of the amendment, discharge or revocation of a Certificate is sent to any solicitor in accordance with Rule 6, 8 or 9 the solicitor shall lodge a copy of the Certificate or notice with either the Solicitor of the Church (where the proceedings to which the Certificate

relates are before the Presbyterial Commission) or the Principal Clerk (where the proceedings to which the Certificate relates are before the Judicial Commission).

APPLICATIONS FOR LEGAL AID AND ISSUE OF CERTIFICATES

3. Applications for legal aid

- (1) An application for legal aid:
 - (a) shall be made in writing in a form approved by the Sub Committee; and
 - (b) shall be lodged with the Secretary.
- (2) Every application for legal aid shall state the name and address of the solicitor selected by the Applicant to act for him or her in the proceedings concerned. That solicitor must hold and continue to hold an unrestricted practising certificate issued by the Law Society of Scotland. The said application shall also contain such information and be accompanied by such documents as may be requisite to enable the Sub Committee
 - (a) to determine the nature of the proceedings to which the application relates; and
 - (b) to reach a view on the matters set out at Regulation 4 (a) to (c) above.
- (3) Any application for legal aid shall contain an undertaking made by the Applicant and an undertaking by the said solicitor that they will comply with these Regulations, and any such undertakings shall be made on forms approved by the Sub Committee, or in such other manner, being in writing, as the Secretary may accept as sufficient in the circumstances of the case. Any solicitor appointed in terms of Rule 8(5) shall give an undertaking in said terms.
- (4) The Applicant irrevocably waives his or her right of confidentiality insofar as its exercise would otherwise hinder or restrain his or her solicitor's ability to comply with Rule 14.

4. Provision of additional information

An Applicant shall, if required by the Secretary or the Sub Committee to do so for the purpose of providing additional information:

- (a) attend for interview by the Secretary or the Sub Committee;
- (b) supply such further documents or other information as the Secretary or the Sub Committee may require.

5. Interim Certificates

- (1) The Secretary may issue an interim Certificate for legal aid on behalf of the Sub Committee in any case in which the Secretary on receiving an application under Rule 3 considers that there are reasonable grounds for concluding that the Applicant should be granted legal aid in respect of the whole or part of the costs to be incurred by any person before the determination of the application by the Sub Committee.
- (2) Before issuing an interim Certificate under paragraph (1) the Secretary shall consult the Convener of the Sub Committee or, if it is not practicable to do so, shall consult the two other members of the Sub Committee one of whom shall be legally qualified.

6. Issue and contents of Certificates

- (1) The Secretary shall send any Certificate issued by or on behalf of the Sub Committee to the Applicant's solicitor and shall send a copy of the Certificate to the Applicant.
- (2) In addition to any provision included in the Certificate by virtue of Regulation 6, the Certificate shall specify:
 - (a) the date on which it is issued;
 - (b) the name and address of the Applicant;
 - (c) the name and address of the Applicant's solicitor; and
 - (d) the proceedings to which the Certificate relates.

7. Contribution by Assisted Person

Where a Certificate is issued under Regulation 6 (b), any contribution to be made by the Assisted Person which is specified in the Certificate shall not be payable to the Sub Committee or into the Fund, but the amount paid or payable out of the Fund on the authority of the Certificate shall not exceed the amount (if any) by which the total amount of the costs incurred by the Assisted Person, as taxed or assessed in accordance with these Rules, exceeds the amount of that contribution.

AMENDMENT, DISCHARGE AND REVOCATION OF CERTIFICATES

8. Power to amend Certificates

(1) The Sub Committee may, either on the request of the Assisted Person or of its own motion, amend any Certificate issued by it where in its opinion:

- (a) there is a mistake in the Certificate; or
- (b) it has become desirable for the Certificate to extend to additional proceedings; or
- (c) it has become desirable for the Certificate to extend to additional stages of, or to reduce or restrict it from certain stages of, the proceedings in respect of which it was issued; or
- (d) there has been a material change in the financial circumstances of the Assisted Person;

or where the Assisted Person desires to change his or her solicitor or where his or her solicitor withdraws from the conduct of the case. Any new solicitor assuming the agency must hold and continue to hold an unrestricted practising certificate issued by the Law Society of Scotland.

(2) Application for the amendment of a Certificate shall contain such information and be accompanied by such documents as the Secretary considers necessary or desirable to enable the Sub Committee to determine the application, and Rules 3(1) and 4, and Regulations 4, 8, 9 and 10 shall apply in relation to an application for the amendment of a Certificate as they apply in relation to an application for legal aid.

(3) Before amending a Certificate in the circumstances specified in paragraph (1)(c) or (d) so as to reduce or restrict the Assisted Person's entitlement to legal aid, the Sub Committee shall:

- (a) notify the Assisted Person that it is considering making the amendment; and
- (b) afford him or her an opportunity of making representations, whether in writing or orally and whether in person or by his or her solicitor or counsel, with respect to the proposed amendment.

(4) An amendment to a Certificate shall take effect from such date as the Sub Committee may specify, and (subject to Rule 11) shall have effect in respect of costs incurred on or after that date.

(5) Where a Certificate has been amended the Secretary shall send notice of the amendment, specifying the date from which it takes effect, together with a copy of the notice, to the Assisted Person's solicitor for the time being, and shall send a further copy of the notice to the Assisted Person.

9. Power to discharge or revoke Certificates

(1) The Sub Committee may terminate a Certificate by discharging or revoking it in accordance with this Regulation.

(2) Subject to Rule 11:

- (a) where a Certificate is discharged, that Certificate shall cease to be in force on the date from which the discharge takes effect; and
- (b) where a Certificate is revoked, that Certificate shall be deemed never to have been in force.

(3) The Sub Committee may discharge a Certificate in the following circumstances:

- (a) where the Assisted Person has requested or consented to the discharge;
- (b) where the Sub Committee is satisfied that

- (i) the Assisted Person has died or has had a bankruptcy order made against him or her; or
 - (ii) the proceedings or the part of the proceedings to which the Certificate relates have or has been disposed of or completed;
- (c) where as a result of information which has come to the Sub Committee it is satisfied that:
- (i) the Assisted Person no longer has reasonable grounds for taking, defending or being a party to the proceedings or for continuing to do so;
 - (ii) the Assisted Person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
 - (iii) the financial circumstances of the Assisted Person are such that he or she could afford to proceed without legal aid; or
 - (iv) it is unreasonable in the particular circumstances that the Assisted Person should continue to receive legal aid.
- (4) Where as a result of information which has come to the Sub Committee:
- (a) the Sub Committee is satisfied that an Assisted Person has willfully failed to comply with these Rules or Regulations; or
 - (b) it is satisfied that an Assisted Person has knowingly made a false statement or false representation in connection with an application for legal aid or for an amendment of a Certificate; or
 - (c) it is satisfied that an Assisted Person has failed to disclose a material fact in connection with an application for legal aid or an application for an amendment of a Certificate, and he or she cannot show that he or she used due care and diligence to avoid that failure,
- the Sub Committee may discharge the Certificate issued in respect of the Assisted Person or, if the act or omission or the first of the acts or omissions by the Assisted Person specified in sub-paragraph (a), (b) or (c) occurred before the date on which the Certificate was issued, may revoke the Certificate.
- (5) Before discharging a Certificate in the circumstances specified in paragraph (3) (c) or discharging or revoking a Certificate in the circumstances specified in paragraph (4), the Sub Committee shall:
- (a) notify the Assisted Person that it is considering the discharge or revocation of the Certificate; and
 - (b) afford him or her an opportunity of making representations, whether in writing or orally and whether in person or by his or her representative, with respect to the proposed discharge or revocation.
- (6) The discharge of a Certificate under the foregoing provisions of this Rule shall take effect from such date as the Sub Committee may consider appropriate.
- (7) Where a Certificate is discharged or revoked the Secretary shall send notice of the discharge or revocation (specifying in the case of a discharge the date from which it takes effect), together with a copy of the notice, to the solicitor of the person in respect of whom a certificate had been issued and shall (except where the Certificate has been discharged because of the death of that person) send a further copy of the notice to that person, in each case stating the grounds for the action taken.

10. Effect of amendment, discharge or revocation on costs already incurred

- (1) Where a Certificate is amended so as to reduce or restrict the amount of legal aid payable under it or is discharged or revoked, that amendment, discharge or revocation shall not affect the payment, or the amount of the payment, out of the Fund to the solicitor of the person in relation to whom the Certificate was issued in respect of costs incurred before the date on which notice of the amendment, discharge or revocation is received by that solicitor.

- (2) Where a Certificate has been amended or discharged with effect from a date earlier than the date on which notice of the amendment or discharge is received by the solicitor of the person to whom the Certificate was issued, that person accepts personal liability for and shall pay into the Fund the amount of any legal aid paid or payable to his solicitor by virtue of paragraph (1) in respect of costs incurred between those dates.
- (3) Where a Certificate has been revoked, the person to whom it was issued accepts personal liability for and shall pay into the Fund the amount of any legal aid paid or payable to his or her solicitor by virtue of paragraph (1) in respect of costs incurred before the date on which notice of the revocation is received by that solicitor.

CONDUCT OF PROCEEDINGS

11. Notification of changes in circumstances

- (1) An Applicant or Assisted Person shall forthwith inform his or her solicitor of:

- (a) any material change in his or her financial circumstances; and
- (b) any other change in the circumstances of his or her case which he or she has reason to believe might affect the terms or continuation of the Certificate, and

an Applicant's or Assisted Person's solicitor who receives any such information from the Applicant or Assisted Person or otherwise shall forthwith report that information to the Sub Committee.

- (2) Without prejudice to paragraph (1), where a solicitor who has acted or is acting for an Assisted Person is:
 - (a) aware that the Assisted Person has died or granted a protected trust deed or applied for a debt payment programme or has had a bankruptcy order made against him; or
 - (b) satisfied that the proceedings or the part of the proceedings to which the Certificate relates have or has been disposed of or completed,

he or she shall forthwith report those matters to the Sub Committee.

12. Abuse of legal aid

- (1) Where an Assisted Person's solicitor has reason to believe that any of the circumstances mentioned in paragraph (3) exist, he or she shall forthwith report those circumstances to the Sub Committee.
- (2) Where at any time during the hearing of any proceedings in respect of which legal aid is granted, the Presbyterial Commission or the Judicial Commission (as the case may be) considers that any of the circumstances mentioned in paragraph (3) exist, it may make an order referring to the Sub Committee the question of whether the Assisted Person's Certificate should continue.
- (3) The circumstances referred to in paragraphs (1) and (2) are that:
 - (a) the Assisted Person has required the proceedings to which the Certificate relates to be conducted unreasonably so as to incur an unjustifiable expense to the Fund or has required unreasonably that the proceedings be continued;
 - (b) the Assisted Person has wilfully failed to comply with these Regulations;
 - (c) the Assisted Person has knowingly made a false statement or false representation in connection with an application for legal aid or for amendment of a Certificate;
 - (d) the Assisted Person has failed to disclose a material fact in connection with an application for legal aid or for amendment of a Certificate and he or she cannot show that he or she used due care and diligence to avoid that failure.
- (4) Where it appears to the Sub Committee that a person has, with intent to reduce that person's disposable income or disposable capital, whether for the purpose of making that person eligible for legal aid, reducing that person's liability to pay a contribution towards civil legal aid or otherwise
 - (a) directly or indirectly deprived that person of any resources; or

- (b) converted any part of that person's resources into resources which under these Regulations are to be wholly or partly disregarded or in respect of which nothing is to be included in determining the resources of that person

the resources of which that person has so deprived himself or herself or which he or she has so converted shall be treated as part of that person's resources or as not so converted, as the case may be.

- (5) Where it appears to the Sub Committee that any solicitor has, in connection with the provision of legal aid, acted in such a way as to justify action being taken against him or her by the Law Society of Scotland or the Scottish Solicitors' Discipline Tribunal it shall refer the matter to either of those bodies so that they can consider whether to take action. Where the Sub Committee has referred a matter to either of the bodies mentioned it may withhold payment of any fees due to him or her in respect of legal aid pending the outcome of the investigation by the body or bodies to which the matter has been referred.

13. Provision of further information

An Assisted Person and his or her solicitor shall give to the Sub Committee such information regarding the progress and disposal of the proceedings in respect of which the Certificate has been issued as the Sub Committee may from time to time require to enable it to perform its functions.

14. Power of Sub Committee to request documents.

- (1) The Sub Committee may, for the purpose of determining whether a solicitor may be seeking to recover from the Fund money to which he or she is not entitled, as, for example, by performing unnecessary work, or where a solicitor is or may not be complying with his or her obligations under these Regulations, request any solicitor to produce such documents relating wholly or partly to the provision of legal aid as it may specify, at such time and place as it may specify.
- (2) If it appears to the Sub Committee that there is good reason to do so, it may request any solicitor to produce forthwith any such documents as are mentioned above.

- (3) The power under this section to request production of documents includes power:

- (a) to request any person, who is a present or past partner or employee of any such solicitor or his or her firm and who appears to the Sub Committee to have any documents, to produce them;
- (b) if any documents are produced:
- (i) take copies of them or extracts from them; and
- (ii) to request the person producing them, or any other person who is a present or past partner or employee of the solicitor or his or her firm, to provide an explanation of them;
- (c) if any document or information is held other than in legible form, to request the production of a copy of it in legible form; and
- (d) if documents are not produced, to ask the person who was requested to produce them to state, to the best of his knowledge and belief, where they are.

- (4) No documents obtained by the Sub Committee by virtue of this Rule shall be used by it for any purpose other than the purposes mentioned in subsection (1) above.

15. Privilege etc. not to prevent disclosure

- (1) No solicitor shall be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing to the Sub Committee any information or documents or from giving any opinion which:
- (a) he or she is required to disclose or give to the Sub Committee under these Regulations; or
- (b) may enable the Sub Committee to perform its functions.
- (2) For the purpose of providing information under these Regulations to enable the Sub Committee to perform its functions, any party to proceedings to which an Assisted Person is or was a party may disclose to the Sub Committee communications relating to those

proceedings which have been sent by the Assisted Person's solicitor, whether or not they are expressed to be "without prejudice".

16. False information etc.

If any Assisted Person, person seeking legal aid or person in respect of whom a certificate has been issued

- (a) wilfully fails to comply with any Regulations as to the information to be furnished by him or her; or
- (b) for the purpose of obtaining legal aid knowingly makes any false statement or false representation,

he or she may be guilty of a disciplinary offence for the purposes of the Act.

COSTS

17. Authority to incur costs

(1) Where:

- (a) it appears to the Assisted Person's solicitor to be necessary for the proper conduct of proceedings to which the Certificate relates to incur costs by taking any of the steps specified in paragraph (2); and
- (b) payment of legal aid in respect of those costs is not specifically authorised by the Certificate,

the Assisted Person's solicitor shall apply to the Sub Committee for authority to incur those costs, and no payment of legal aid shall be made in respect of any such costs incurred in advance of the solicitor's first having obtained authority from the Sub Committee. Authority may be granted subject to any restriction, condition or qualification as to cost limits or otherwise as to the Sub Committee shall seem reasonable.

(2) The steps referred to in paragraph (1) are:

- (a) lodging an appeal;
- (b) obtaining a report or opinion from one or more experts or tendering expert evidence;

- (c) employing a person to provide a report or opinion (other than as an expert) or paying a person (not being an expert witness) a fee to prepare a report or opinion and to give evidence if required;
- (d) requiring transcripts of shorthand notes or tape recordings of any proceedings;
- (e) performing any act which either is unusual in its nature or involves unusually large expenditure.
- (f) instructing junior counsel.
- (g) Instructing senior counsel.

(3) Authority may be granted retrospectively on special cause shown.

18. Costs for legal aid to be taxed or assessed

Legal aid shall be payable only in respect of costs of an Assisted Person which have been taxed or assessed in accordance with these Rules.

19. Restriction on payment and employment of solicitor or counsel

Where legal aid is available to a person in connection with any proceedings (whether legal aid is available in connection with all or only part of the proceedings):-

- (a) the solicitor or counsel providing legal aid shall not take any payment in respect of any advice given or anything done in connection with such proceedings during any period when legal aid was so available except for such payment as may be made, in accordance with these Regulations; and
- (b) without prejudice to any right of a solicitor or advocate to entrust it to another solicitor or advocate, no solicitor or counsel other than the solicitor or counsel referred to in Rule 3(2) shall advise or act for him in connection with the proceedings.

20. Taxation of costs

(1) Any taxation of costs under these Regulations may be carried out in such manner as the Sub Committee considers appropriate. Without prejudice to the generality of the foregoing the Sub Committee may refer the matter for taxation to an Auditor of the Court

of Session, Sheriff Appeal Court or any Sheriff Court and the Assisted Person agrees to be bound by the determination of such Auditor. Liability for the fees and other costs incurred in taxation shall be a matter for the discretion of the Sub Committee.

- (2) In any proceedings for taxation in accordance with these Regulations the Sub Committee shall have power to require the attendance of witnesses and production of documents so far as is necessary for the discharge of its functions or those of any Auditor.
- (3) Proceedings for taxation of costs in accordance with these Regulations shall be commenced by the Assisted Person's solicitor:
 - (a) lodging with the Secretary an application in writing for taxation, together with the bill of costs and all necessary papers and vouchers (including copies of the Certificate and of any notice of amendment, discharge or revocation of the Certificate); and
 - (b) serving on any other party copies of the application and the bill of costs.
- (4) The Secretary may deal with the taxation of costs by correspondence or may elect to fix a time and place for a taxation hearing and if a hearing is deemed to be appropriate shall give not less than seven days' notice of that time and place to the Assisted Person's solicitor and any other party.
- (5) If:
 - (a) any other party does not attend at the time and place fixed for the taxation; and
 - (b) the Sub Committee is satisfied that he or she had due notice of that time and place,the Sub Committee or Auditor may proceed with the taxation in his absence.
- (6) Without prejudice to any other provision of these Regulations or any statutory provision, on a taxation in accordance with these Regulations:

- (a) any costs in excess of the appropriate level of authorised expenditure allowed in terms of Regulation 5 (c) shall be disallowed;
 - (b) any costs wasted by failure to conduct the proceedings with reasonable competence and expedition shall be disallowed or reduced; and
 - (c) where a solicitor has without good reason failed within four months to put in his or her bill for taxation, the whole of the costs covered by that bill may be disallowed or reduced.
- (7) No costs shall be disallowed or reduced under paragraph (6) unless notice has been served by the Sub Committee on the solicitor in question requiring the solicitor to show cause orally or in writing why those costs should not be disallowed or reduced.
 - (8) For the purposes of this rule "other party" means any person other than the Assisted Person who is or was a party to the proceedings to which the Certificate relates and who has an interest in the taxation.

21. Assessment of costs

- (1) Paragraph (2) applies where Rule 20 requires any costs to be taxed or assessed in accordance with these Regulations and where:
 - (a) the retainer of the Assisted Person's solicitor was determined before the proceedings in question were begun, and there has been no subsequent change in the Assisted Person's solicitor; or
 - (b) the Assisted Person's solicitor is of opinion that the total amount of the costs which he or she would receive after a taxation in accordance with these Regulations would not be more than £1000 (or any greater sum for the time being authorised by the Sub Committee for the purposes of this Rule); or
 - (c) there has been an agreement in respect of the amount of the costs to be paid to the Assisted Person, and the Assisted Person's solicitor is willing to accept that agreed amount in full satisfaction of work done; or

- (d) there are special circumstances in which a taxation:
 - (i) would be against the interests of the Assisted Person; or
 - (ii) would increase the amount payable out of the Fund.
- (2) Where this paragraph applies the Assisted Person's solicitor may apply in writing to the Secretary for an assessment by the Sub Committee of the amount of the Assisted Person's costs.
- (3) On any such application the Sub Committee may if it thinks fit assess the amount of those costs without a taxation.
- (4) Where no such application has been made and the Sub Committee is satisfied that:
 - (a) there are special circumstances rendering it desirable to assess the amount of those costs without a taxation; and
 - (b) to do so would not be against the interests of the Assisted Person,

the Sub Committee may assess the amount of those costs without a taxation.
- (5) An assessment under this Rule shall be carried out so as to allow:
 - (a) as nearly as may be the same amount of costs as would have been allowed on a taxation under these Regulations; or
 - (b) if the Sub Committee thinks fit in a case within sub-paragraph (1)(c), the agreed amount referred to in that sub-paragraph.

Part Two - Financial Eligibility

DISPOSABLE INCOME AND CAPITAL RANGE AND MAXIMUM CONTRIBUTION – SLIDING SCALE

Disposable capital (as defined in Part Three of this Schedule)

Lower limit on or below which an Assisted Person will not have to pay a contribution: **£7,853**.

Upper capital limit above which the Sub Committee may refuse an Applicant legal aid if it considers that he or she can afford to proceed without it: **£13,017**.

If a person has disposable capital of between £7,853 and £13,017 he or she is eligible on capital, but will have to pay a contribution. This contribution is equal to the difference between his or her capital and £7,853.

If a person has capital worth over £13,017 he or she will not be eligible for legal aid, unless it appears to the Sub Committee that he or she cannot afford to proceed without legal aid.

Disposable Income (as defined in Part Three of this Schedule)

Lower disposable limit on or below which a person will not have to pay a contribution: **£3,521** p.a

Upper disposable limit above which a person will be ineligible on income: **£26,239** p.a

Income contributions

Annual Disposable income	Contribution rates applied to income in that range
Below £3,521	0%
£3,522 - £11,540	33%
£11,541 - £15,743	50%
£15,744 - £26,239	100%
Above £26,239	Ineligible

Part Three - Financial Eligibility

DETAILED RULES AS TO CALCULATION OF CAPITAL AND INCOME

A. Calculation of disposable capital

1. Subject to the provisions of these Regulations, there shall be included in the computation of the Applicant's

capital the amount or value of every resource of a capital nature available to the Applicant and his or her partner ascertained as on the date of the application for legal aid. Where it is brought to the notice of the Sub Committee that, between the date of the application and the determination, there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Sub Committee shall compute the capital resources of the Applicant in the light of such facts and the resources as so computed shall be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Sub Committee to be just and equitable.
2. Where money is due to the Applicant or his or her partner, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.
4. If the Applicant or his or her partner stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Sub Committee may, in lieu of ascertaining the value of stocks, shares, bonds or debentures in that company, treat the Applicant or their partner as if he or she were such sole owner or partner and compute the amount of his or her capital in respect of that resource in accordance with the succeeding rule.
5. Where the Applicant or his or her partner is or is to be treated as the sole owner of or a partner in any business, the value of such business or their share therein shall be taken to be either:
 - (a) such sum, or the Applicant's or his or her partner's share of such sum, as the case may be,

as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or

- (b) such sum as the Applicant or his or her partner could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business;
- whichever is the greater.
6. The value of any interest, whether vested or contingent, of the Applicant or his or her partner in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be computed by the Sub Committee in such manner as appears to it to be both equitable and practicable.
 7. In computing the amount of capital of the Applicant or his or her partner where he or she is in receipt of income support under section 124 of the 1992 Act or an income-based jobseeker's allowance (payable under the Jobseekers Act 1995) or an income-related employment and support allowance or universal credit under Part 1 of the Welfare Reform Act 2012, there shall be disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 17(2)(b) of that Act.
 8. In computing the amount of capital of the Applicant or his or her partner, there shall be wholly disregarded:
 - (a) any Welfare Fund payment;
 - (b) a back to work bonus (payable under the Jobseekers Act 1995);
 - (c) any payment made under the Community Care (Direct Payments) Act 1996 or as a direct payment as defined in section 4(2) of the Social Care (Self-directed Support) (Scotland) Act 2013.
 9. Save in exceptional circumstances, nothing shall be included in the amount of capital of the Applicant or his or her partner in respect of:
 - (a) the household furniture and effects of the dwelling house occupied by that person and (if a

- manse) of any other dwelling house owned by the Applicant and/or their partner;
- (b) articles of personal clothing; and
 - (c) any personal tools and equipment of the Applicant's trade, not being part of the plant or equipment of a business to which the provisions of Rule 5 of this Part Three A of the Schedule apply.
10. (1) In computing the amount of capital of the Applicant or his or her partner, the value of any interest in the main or only dwelling in which he or she resides or owns shall be wholly disregarded.
 - (2) Where the Applicant resides in or owns more than one dwelling in which that person has an interest, the Sub Committee shall decide which is the main dwelling and shall take into account, in respect of the value to the Applicant of any interest in a dwelling which is not the main dwelling, (i) any sum which might be obtained by borrowing money on the security thereof and (ii) any sum accruing to him or her by way of rent on such dwelling.
 11. Where the Applicant has received or is entitled to receive from a body of which he or she is a member a sum of money by way of legal aid towards the cost of the proceedings in respect of which legal aid is applied for, such sum shall be disregarded.
 12. The value of any life assurance or endowment policy shall be taken to be the amount which the Applicant could readily borrow on the security thereof.
 13. Where under any bond, agreement, indemnity, guarantee or other instrument the Applicant is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for legal aid.
 14. An allowance may be made in respect of any debt owed by the Applicant (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Sub Committee considers reasonable, provided that he or she produces evidence to its satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.
 15. In computing the amount of capital of the Applicant there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the application for legal aid has been made.
 16. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Sub Committee in the circumstances of the case may in its discretion decide.
- B. Calculation of disposable income**
1. The income of the Applicant or his or her partner from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the preceding year.
 2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable but shall not include any sum in relation to the occupation of a manse by a Minister.
 3. (1) The income from any gainful occupation other than stipend, or employment at a wage or salary, shall be deemed to be whichever of the following the Sub Committee considers more appropriate and practicable:
 - (a) the profits which have accrued or will accrue to the Applicant or their partner in respect of the period of computation; or
 - (b) the drawings of the person concerned.
 - (2) In calculating the profits and drawings referred to in paragraph (1) above:
 - (a) the Sub Committee may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and

- (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the Applicant or any member of that person's family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of that person's remuneration.
4. (1) In computing the disposable income of the Applicant or his or her partner there shall be deducted the total amount of tax which it is estimated would be payable by the Applicant or his or her partner if his or her income, as computed in accordance with this Part Three B of the Schedule (but without taking into account the operation of Rule 10(1) of this Part Three B of the Schedule), were that person's income for a fiscal year and that person's liability for tax in that year were to be ascertained by reference to that income and not by reference to that person's income in any other year or period.
- (2) For the purposes of this rule the tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application.
5. In computing the disposable income of the Applicant or his or her partner, there shall be disregarded:
- (a) income support paid under section 124 of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act");
 - (b) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995);
 - (c) a back to work bonus (payable under the Jobseekers Act 1995);
 - (d) any payment made under the Community Care (Direct Payments) Act 1996 or as a direct payment as defined in section 4(2) of the Social Care (Self-directed Support) (Scotland) Act 2013;
 - (e) state pension credit (payable under the State Pension Credit Act 2002);
 - (f) an income-related employment and support allowance;
 - (g) universal credit paid under Part 1 of the Welfare Reform Act 2012.
 - (h) attendance allowance paid under section 64 of the 1992 Act;
 - (i) disability living allowance paid under section 71 of the 1992 Act;
 - (j) constant attendance allowance paid as an increase to a disablement pension under section 104 of the 1992 Act.
6. When the income of the Applicant or his or her partner consists, wholly or in part, of stipend or a wage or salary from employment there shall be deducted:
- (a) the amount of any payments reasonably made for travel to and from his or her workplace, membership of a trade union or professional organisation; and
 - (b) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975 or to a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993.
7. There shall be a deduction in respect of the amounts payable or estimated to be payable in the 12 months following the application by the Applicant in respect of:
- (a) Council Tax; and
 - (b) Water and Sewerage Charges.
8. (1) There shall be a deduction, in respect of (a) mortgage payments or (b) rent of the main or only dwelling in the case of a householder, of the amount of the net mortgage or rent paid or such part thereof as is reasonable in the circumstances. Any contributions received from any other person towards that payment of

mortgage or rent shall be taken into account as income, and the Sub Committee shall decide which is the main dwelling where the Applicant resides in more than one dwelling in which he or she has an interest.

(2) In this rule the expression "rent" means:

- (a) the rent payable in respect of a year; and
- (b) a sum in respect of the yearly outgoings borne by the householder including, in particular, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden.

(3) In this rule the expression "net rent" means:

- (a) the rent less any proceeds of subletting any part of the premises in respect of which the said rent is paid or the outgoings incurred; or
- (b) where any person or persons other than the Applicant, his or her partner or any dependent of the Applicant is accommodated, otherwise than as a subtenant, in the premises for which the rent is paid, the rent less such an amount as the Sub Committee may determine to be reasonably attributable to the accommodation of such person.

9. If the Applicant is not a householder, there shall be a deduction in respect of the cost of that person's living accommodation of such amount as is reasonable in the circumstances.

10. (1) There shall be a deduction in respect of the maintenance of the partner of the Applicant, if they are living together, and in respect of the maintenance of any person wholly or substantially maintained by the Applicant, being a member of his or her household, ("a dependent person") at the following rates:-

- (a) in the case of a partner, at a rate of £2,177;

- (b) in the case of a dependent person, at a rate of £3,488;

Provided that the Sub Committee may reduce such rate by taking into account the income and other resources of the dependent person to such extent as appears to it to be just and equitable.

(2) In ascertaining whether a person is a dependent person regard shall be had to their income and other resources.

11. If the Applicant is making and, throughout such period as the Sub Committee may consider adequate, has regularly made *bona fide* payments for the maintenance of a partner who is living apart, of a former partner, of a child or of a relative who is not (in any such cases) a member of the household of the Applicant, there shall be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

12. Where the Applicant must provide for any other matter the Sub Committee may make an allowance of such amount as it considers to be reasonable in the circumstances of the case.

13. In computing income from any source there shall be disregarded such amount, if any, as the Sub Committee considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

Appendix F

[] ACT AMENDING THE APPEALS ACT (ACT I 2014)

Edinburgh, [] May 2018, Session []

The General Assembly hereby enact and ordain that the Appeals Act (Act I 2014), as amended, shall be further amended as follows:

1. *In the existing section 14(2), delete the word "forty" and substitute the word "twenty-five".*

Appendix G

[] ACT AMENDING THE DISCIPLINE OF MINISTRY ACT (ACT III 2001)

Edinburgh, [] May 2018, Session []

The General Assembly hereby enact and ordain that the Discipline of Ministry Act (Act III 2001), as amended, shall be further amended as follows:

1. *Delete the existing section 3(4) and substitute the following:*

"A Presbytery shall initiate investigatory proceedings as soon as it comes to the notice of the Presbytery that (a) the name of a person over whom it has jurisdiction has been placed on the Sex Offenders' Register or included in the Children's List and/or the Adults' List kept under Section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof), and/or (b) a person over whom it has jurisdiction has failed to advise the Church's Safeguarding Service of (a) any act, default or omission, or (b) any circumstances arising, bearing upon that person's suitability to undertake Regulated Work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof)."

2. *In section 19, add a new subsection (3) "In relation to an appeal, the Clerk of the Judicial Commission may invite the Presbyterial Commission to furnish a report in writing on the case generally and in particular on the*

Grounds of Appeal, for the assistance of the parties and of members of the Judicial Commission."

3. *In section 22(4) make the following amendments:*

- (i) *In the first line of section 22(4)(a) delete "When an Appeal has been submitted to" and substitute "When Grounds of Appeal have been lodged with".*
- (ii) *In the third line of section 22(4)(c) delete "lodging of the Appeal" and substitute "lodging of the Grounds of Appeal".*

4. *Amend section 22 by adding at the start "Subject always to section 22A, which shall apply where a Respondent appoints a solicitor to represent him or her in proceedings under this Act, following receipt of intimation in terms of section 5(1), on or after 31 May 2018,.....".*

5. *Insert a new section 22A as follows:*

"22A. Where a Respondent appoints a solicitor to represent him or her in proceedings under this Act, following receipt of intimation in terms of section 5(1), on or after 31 May 2018, (i) the expenses of the Respondent in the conduct of proceedings under this Act and any appeal following thereon, may be met from central funds of the Church only in accordance with the terms of the Legal Aid in Disciplinary Proceedings Regulations (Regs ZZ 2018), and (ii) the expenses of the Special Committee of Presbytery in the conduct of proceedings under this Act may be met from central funds of the Church only on a basis equivalent to that which the Respondent could obtain in terms of Regulation 5(c) of the Legal Aid in Disciplinary Proceedings Regulations (Regs ZZ 2018)."

Appendix H

[] ACT AMENDING THE DISCIPLINE OF ELDERS, READERS AND OFFICE BEARERS ACT (ACT I 2010)

Edinburgh, [] May 2018, Session []

The General Assembly hereby enact and ordain that the Discipline of Elders, Readers and Office Bearers Act (Act I 2010), as amended, shall be further amended as follows:

1. *Delete the existing section 7 and substitute the following:*

“A Presbytery shall initiate investigatory proceedings as soon as it comes to the notice of the Presbytery that (a) the name of a person over whom it has jurisdiction has been placed on the Sex Offenders’ Register or included in the Children’s List and/or the Adults’ List kept under Section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof), and/or (b) a person over whom it has jurisdiction has failed to advise the Church’s Safeguarding Service of (a) any act, default or omission, or (b) any circumstances arising, bearing upon that person’s suitability to undertake Regulated Work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof).”

Appendix I

OPINION OF THE PROCURATOR

regarding

SOLEMNISATION OF SAME SEX MARRIAGE

IN THE CHURCH OF SCOTLAND

INTRODUCTION

- 1.1 This Opinion is provided to contribute to the ongoing debate within the Church of Scotland on the possibility of allowing the solemnisation of same sex marriages by particular clergy within the Church. The consequences in civil law of such a change require to be identified so that any decision to introduce solemnisation of same sex marriage, even to a limited extent, is taken against a background of awareness of likely consequences, so far as these are capable of prediction.
- 1.2 This Opinion begins with a discussion of the legislation on marriage in Scotland, followed by the relevant provisions of the Equality Act 2010 and, lastly, some observations on the practical issues which any such change of position is likely to generate.

LEGISLATION

Marriage

- 2.1 At present, a Church of Scotland minister is authorised both by the Church and by the civil authorities to conduct between a man and a woman a wedding ceremony which will constitute a valid marriage under Scots law. Marriage in church law is dealt with by the Recognition of Marriage Services Act (Act 1 1977). This provides that the parties must covenant to take each other as husband and wife, and that the minister must declare them to be so. Validity under Scots law occurs because section 8 of the Marriage (Scotland) Act 1977 expressly declares all Church of Scotland ministers and deacons to be authorised celebrants of marriage between persons of different sexes.^[3]

2.2 Section 8 has been amended to provide for same sex marriage, with DSM and SSM dealt with in different subsections, (1) and (1B) respectively. For SSM, there is no express declaration in relation to the Church of Scotland. For convenience, I set out the relevant parts of section 8. Also relevant is section 9, dealt with in the next section of this Opinion.

8. **Persons who may solemnise marriage.**

(1)a marriage between persons of different sexes may be solemnised by and only by—

- (a) a person who is—
 - (i) a minister or deacon of the Church of Scotland; or
 - (ii) a minister, clergyman, pastor, priest or other celebrant of a religious or belief body prescribed by regulations made by the Secretary of State, or who, not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of different sexes on its behalf; or
 - (iii) registered under section 9 of this Act to solemnise marriage between persons of different sexes; or
 - (iv) temporarily authorised under section 12 of this Act to solemnise marriage between persons of different sexes; or
- (b) a person who is a district registrar or assistant registrar appointed under section 17 of this Act.

(1A) The Scottish Ministers may prescribe a religious or belief body under subsection (1)(a)(ii) only if—

- (a) the body requests them to do so; and
- (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.

(1B) ..., a marriage between persons of the same sex may be solemnised by and only by—

- (a) a person who is—
 - (i) a minister, clergyman, pastor, priest or other celebrant of a religious or belief body prescribed by regulations made by the Scottish Ministers, or who, not being one of the foregoing, is recognised by a religious or belief body so prescribed as entitled to solemnise marriage between persons of the same sex on its behalf;
 - (ii) registered under section 9 to solemnise marriage between persons of the same sex; or
 - (iii) temporarily authorised under section 12 to solemnise marriage between persons of the same sex; or
- (b) a person who is a district registrar or assistant registrar appointed under section 17.

(1C) The Scottish Ministers may prescribe a religious or belief body under subsection (1B)(a)(i) only if—

- (a) the body requests them to do so; and
- (b) the Scottish Ministers are satisfied that the body meets the qualifying requirements.

(1D) For the avoidance of doubt, nothing in subsection (1B)(a) or (1C)(a)—

- (a) imposes a duty on any religious or belief body to make a request referred to in subsection (1C)(a);
- (b) imposes a duty on any such body to nominate under section 9 any of its members to be registered as empowered to solemnise marriages between persons of the same sex;
- (c) imposes a duty on any person to apply for temporary authorisation under section 12 to solemnise marriages between persons of the same sex;

- (d) *imposes a duty on any person who is an approved celebrant in relation to marriages between persons of the same sex to solemnise such marriages.*

.....

2.3 The key features of section 8 are

- That authorisation to conduct either DSM or SSM is granted by denomination – in other words, all clergy or other persons within a denomination who are authorised by the denomination to conduct weddings are thereby empowered to solemnise legally valid marriages.
- That for all clergy to be authorised celebrants of SSM in the same way as they are for DSM, the Church of Scotland would have to become a prescribed body under section 8.
- That such prescription would only occur if the Church were to apply for it.
- That there is no obligation on any organisation so to apply.

2.4 Section 9 is also relevant. The authorisation granted under section 9 is by person not by denomination. In the context of DSM, it has no relevance to clergy of the Church of Scotland, because the Church is specifically recognised under section 8. Like section 8, it deals separately with DSM and SSM, this time in subsections (1) and (1A). I set out the relevant parts of section 9 for convenience.

9. ***Registration of nominated persons as celebrants.***

- (1) *A religious or belief body, not being—*
- (a) *the Church of Scotland; or*
 - (b) *prescribed by virtue of section 8(1)(a)(ii) of this Act,*
- may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to solemnise marriages between persons of different sexes.*

- (1A) *A religious or belief body, not being prescribed by virtue of section 8(1B)(a)(i), may nominate to the Registrar General any of its members who it desires should be registered under this section as empowered to solemnise marriages between persons of the same sex.*

(2) *The Registrar General shall reject a nomination made under subsection (1) or (1A) above if in his opinion—*

- (a) *the nominating body is not a religious or belief body; or*
- (b) *the marriage ceremony used by that body is not of an appropriate form; or*
- (c) *the nominee is not a fit and proper person to solemnise a marriage; or*
- (d) *there are already registered under this section sufficient members of the same body as the nominee to meet the needs of that body in relation to solemnising marriages between persons of different sexes or, as the case may be, marriages between persons of the same sex.*

....

(3) *For the purposes of subsection (2)(b) above, a marriage ceremony for marriage between persons of different sexes is of an appropriate form if it includes, and is in no way inconsistent with—*

- (a) *a declaration by the parties, in the presence of each other, the celebrant and two witnesses—*
 - (i) *that they accept each other as husband and wife;*
 - (ii) *that they accept each other in marriage; or*
 - (iii) *either or both of sub-paragraphs (i) and (ii);*
- and*

- (b) *a declaration by the celebrant, after the declaration mentioned in paragraph (a) of this subsection—*
- (i) *that the parties are then husband and wife;*
 - (ii) *that the parties are then married; or*
 - (iii) *either or both of sub-paragraphs (i) and (ii),*

and the Registrar General may, before deciding whether to accept or reject a nomination, require the nominating body to produce to him in writing the form of words used at its marriage ceremonies for marriage between persons of different sexes.

- (3A) *For the purposes of subsection (2)(b) above, a marriage ceremony for marriage between persons of the same sex is of an appropriate form if it includes, and is in no way inconsistent with—*
- (a) *a declaration by the parties, in the presence of each other, the celebrant and two witnesses, that they accept each other in marriage;*
 - (b) *a declaration by the celebrant, after the declaration mentioned in paragraph (a), that the parties are then married,*
- and the Registrar General may, before deciding whether to accept or reject a nomination, require the nominating body to produce in writing the form of words used at its marriage ceremonies for marriage between persons of the same sex.*
- (4) *Where the Registrar General accepts a nomination made to him under subsection (1) or (1A) above, he —*
- (a) *shall determine the period during which the nominee shall be empowered to solemnise marriages, being a period of not more than 3 years; and*

- (b) *may determine that the nominee shall be empowered to solemnise marriages only in such area or place as the Registrar General may specify,*

and may make his acceptance subject to such other conditions as he thinks fit:

Provided that nothing in paragraph (a) above shall preclude the Registrar General from accepting a further nomination of that nominee, in accordance with this section, to take effect at any time after the end of the period determined by the Registrar General under the said paragraph (a).

....

2.5 The key features of section 9 are

- That it and section 8 are mutually exclusive as regards each of DSM and SSM – if your denomination is authorised or prescribed under section 8, you cannot be authorised personally to solemnise the same category of marriage under section 9.
- That applications for authorisation are made to the Registrar General.
- That authorisation is time-limited, for a maximum period of three years (although this can be periodically renewed).
- Although, strictly, this is not a feature of section 9 because it is provided by section 8(1D)(b), there is no obligation on any organisation to nominate any members to solemnise SSM.

- 2.6 Finally on the matter of the Marriage (Scotland) Act, there is also section 12, which allows for temporary authorisation of individuals to solemnise marriage. The authorisation under section 12 is limited, either to one or more specific marriages, or by time. It can only be granted if the denomination is already prescribed under section 8, or has nominated members under section 9. It does not, therefore, offer any free-standing routes to authorisation to conduct SSM and is not considered further in this Opinion.

Equality

- 3.1 It is now necessary to turn to the Equality Act 2010.
- 3.2 In part 2 of the Act, chapter 1 sets out protected characteristics. The list includes sexual orientation. Chapter 2 defines direct discrimination: this occurs where A treats B less favourably than others because of a protected characteristic. Indirect discrimination is also defined: this occurs where A applies to B a provision, criterion or practice which disproportionately disadvantages B compared to those who do not have the particular protected characteristic B has.^[4]
- 3.3 It should be noted that chapter 2 also defines harassment and victimisation. The definitions of these terms essentially correspond to their ordinary meaning. Harassment and victimisation based on a protected characteristic is specifically outlawed at various points in the Act. I make this point, but will not deal specifically with these aspects in this Opinion. It suffices to point out that there are remedies under the Act for such conduct.
- 3.4 Parts 3 and 4 of the Equality Act address particular contexts in which discrimination may occur. Part 3 concerns services and public functions, and Part 4 deals with premises. Nothing covered by Part 4 is within Part 3. It therefore makes sense to look at Part 4 first.

Premises

- 3.4.1 Under section 33, a person with the right to dispose of premises is prohibited from discriminating in that role. Similar prohibitions apply to discrimination in the granting of permission for disposal of premises and in the management of premises.^[5]
- 3.4.2 By section 38, a reference to premises includes a reference to part of the premises. Disposing of premises includes granting a right to occupy them.^[6]

- 3.4.3 Schedule 23 to the Act sets out general exceptions. A religious organisation does not contravene Part 4 by restricting the use or disposal of premises owned or controlled by the organisation. A person benefits from the same protection: they do not contravene the Act only by restricting the use of premises on behalf of or under the auspices of the organisation. But any restriction has to satisfy particular criteria. These criteria will already be familiar to some within the Church of Scotland, since they have been addressed in the context of Act 1 2015 (Ministers and Deacons in Civil Partnerships and Same Sex Marriages Act). In short, the restriction has to be being applied to comply with the doctrine of the organisation, or to avoid conflict with strongly held religious convictions of a significant number of the followers of the religion.

Provision of services

- 3.4.4 Part 3 concerns services and public functions. I will begin by looking at the activities to which this part applies.
- 3.4.5 To take the latter expression first, a public function is one which is a function of a public nature for the purposes of the Human Rights Act 1998.^[7] There is already a considerable jurisprudence about how this phrase should be interpreted. The leading UK case in this area remains *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank and Another* [2003] UKHL 37, [2004] 1 AC 546, which concerned the exercise of the powers of the parish church council in relation to chancel repairs. The speeches of the judges in the House of Lords contain discussion about public authorities and public functions. In particular, Lord Rodger makes this observation:

[170] *For the most part, in performing his duties and conducting the prescribed services, the minister is simply carrying out part of the mission of the Church, not any governmental function of the state. On the other hand, when in the course of his pastoral duties the minister marries a couple in the parish church, he may be*

carrying out a governmental function in a broad sense and so may be regarded as a public authority for purposes of the 1998 Act (emphasis added).

3.4.6 It would not be surprising if the act of solemnising a marriage were to be regarded as the exercise of a public function. But even if, for some reason, it were not, the Equality Act also prohibits discrimination in the provision of services, as explained below. It is reasonable to proceed on the basis that solemnising a marriage is covered by one of these expressions. Some of the other features of a wedding (music, flowers and so on) are likely to be covered by the concept of service provision – they are not the exercise of a public function.

3.4.7 The key section on services and public functions is section 29, which prohibits discrimination in the provision of services or exercise of a public function. Provision of services includes the provision of goods or facilities, and the provision of a service in the exercise of a public function. Moreover, making a change to the quality or manner of provision of the service, or terms on which it is provided, as compared with its provision to the public, can be discrimination.

3.4.8 For convenience, I set out section 29 below:

29 ***Provision of services, etc.***

- (1) *A person (a “service-provider”) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.*
- (2) *A service-provider (A) must not, in providing the service, discriminate against a person (B)–*
 - (a) *as to the terms on which A provides the service to B;*
 - (b) *by terminating the provision of the service to B;*
 - (c) *by subjecting B to any other detriment.*

- (3) *A service-provider must not, in relation to the provision of the service, harass–*
 - (a) *a person requiring the service, or*
 - (b) *a person to whom the service-provider provides the service.*
- (4) *A service-provider must not victimise a person requiring the service by not providing the person with the service.*
- (5) *A service-provider (A) must not, in providing the service, victimise a person (B)–*
 - (a) *as to the terms on which A provides the service to B;*
 - (b) *by terminating the provision of the service to B;*
 - (c) *by subjecting B to any other detriment.*
- (6) *A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.*

....

3.4.9 The exceptions which operate here are set out in Schedule 3. A new paragraph was inserted in 2014, at the time of amendment of the Marriage (Scotland) Act to provide for SSM.

25B. ***Marriage of same sex couples and civil partnership: Scotland***

- (1) *An approved celebrant does not contravene section 29 only by refusing to solemnise a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.*
- (2) *An approved celebrant does not contravene section 29 only by refusing to register a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.*

- (3) *A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the solemnising of a relevant Scottish marriage for the reason that the marriage is the marriage of two persons of the same sex.*
- (4) *A person does not contravene section 29 only by refusing to participate in a religious or belief ceremony forming part of, or connected with, the registration of a relevant Scottish civil partnership for the reason that the civil partnership is between two persons of the same sex.*

.....

DISCUSSION

4.1 The key features of these provisions are:

Premises

- Discrimination in granting a right to occupy premises is prohibited; this would cover a refusal to let a hall for a reception or other social function associated with a same sex wedding;
- Such a refusal is capable of justification but, in a Church of Scotland context, it is likely that this is only on the basis that the restriction is being applied to avoid conflict with the strongly held religious convictions of a significant number of followers of the Church of Scotland.

Services

- A celebrant (minister or deacon) does not contravene the Equality Act only by refusing to solemnise a marriage on the basis that it is a SSM;
- A person who would normally participate in a wedding service, such as an organist, does not contravene the Act by refusing to take part because the wedding is a same sex one;
- These protections are not subject to a test of compliance with doctrine or with religious convictions, but are absolute;

- Whilst the protections are absolute, their scope is limited to involvement in the ceremony;
- Others whose input is necessary to the occasion, such as the church officer or a flower arranger, are not offered a specific protection.

4.2 The last two bullet points above raise the question of a dividing line between those who are protected from claims based on discrimination, and those who are not. The protection afforded to people other than celebrants is against claims based on their 'refusing to participate'. The question may arise of what is meant by 'participate'.

4.3 The notion of participating in an activity was considered by the Supreme Court in the case of *Doogan v Greater Glasgow and Clyde Health Board* [2014] UKSC 68; 2015 SC 32. In that case, the Court required to analyse section 4(1) of the Abortion Act 1967, which provides:

(1) ... , no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection.

4.4 The undertaking of a termination requires a sequence of steps, from booking the woman in to discharge home. The two midwives who brought the case contended that they were entitled to object to any involvement with patients undergoing a termination:

...their objections extend to receiving and dealing with the initial telephone call booking the patient into the labour ward, to the admission of the patient, to assigning the midwife to look after the patient, to the supervision of the staff looking after the patient, both before and after the procedure, as well as to the direct provision of any care for those patients, apart from that which they are required to perform under sec 4(2) of the 1967 Act.^[8]

4.5 After concluding that the 'course of treatment' means the whole course of medical treatment bringing about the termination of the pregnancy, Lady Hale continued

[37] *The more difficult question is what is meant by 'to participate in' the course of treatment in question. The employers accept that it could have a broad or a narrow meaning. On any view, it would not cover things done before the course of treatment began, such as making the booking before the first drug is administered. But a broad meaning might cover things done in connection with that treatment after it had begun, such as assigning staff to work with the patient, supervising and supporting such staff, and keeping a managerial eye on all the patients in the ward, including any undergoing a termination. A narrow meaning would restrict it to 'actually taking part', that is actually performing the tasks involved in the course of treatment.*

[38] *In my view, the narrow meaning is more likely to have been in the contemplation of Parliament when the 1967 Act was passed.... 'Participate' in my view means taking part in a 'hands-on' capacity.*

4.6 Clearly, the context is very different, but I consider that the case does offer assistance, given that the same word is under consideration, and the purpose of the legislative provision in each case is to provide a 'conscience' exception. The case is also noteworthy for Lady Hale's recognition that an employee could be unsuccessful in arguing for a wide construction of the conscience clause yet also have a claim for breach of her Article 9 rights.^[9] Such a claim would not lie against the Church since it is not a State employer, but there could be a claim against an employer alleging discrimination on the basis of religion or belief, and Article 9 could then be relied on in proceedings in court, together with supportive case-law, such as the decision of the European Court of Human Rights in *Eweida v United Kingdom* (2013) 57 EHRR 8.

CONCLUSIONS

- 5.1 Drawing all this together, it is apparent that a number of matters require to be considered. It seems to me that the general approach which the Church might wish to follow would reflect a) **accommodation** (of those celebrants who wish to provide this service); b) **protection** (of those other individuals who do not wish to be involved in the provision of this service) and c) **substitution** of others willing and able to fill any such vacant roles (where that is necessary to enable a complete wedding service to be provided).
- 5.2 More specifically, the following points strike me:
- It would not be possible for a minister or deacon of the Church of Scotland to solemnise a SSM unless the Recognition of Marriage Services Act 1977 were changed to provide that marriage is constituted by parties taking each other in marriage.
 - The provisions of section 9 of the Marriage (Scotland) Act 1977, whereby individual celebrants gain authorisation to solemnise SSM by means of nomination to the Registrar General, appear to fit with the current position of the Church of Scotland. Because of its express mention in section 8, the Church does not currently utilise section 9 for DSM,^[10] so a process within the Church whereby an individual minister can put forward their name for nomination will be required.
 - In any permissive legislation, it may be appropriate to state certain general principles. These might concern the entitlement of an individual minister to put him or herself forward; a statement of general principle about premises (both church and hall) and whether their use is a matter for the minister alone and, if not, whether (and which) others have a right of veto; recognition that no-one can be required to participate if they do not wish to, and that no individual whose involvement is necessary for the running of the service but who does not enjoy statutory protection should be made to provide his or her services, alternatives being arranged instead.

- Insofar as premises (sanctuary and hall) are concerned, and if the decision as to use is to involve others additional to the minister, the model which may be most suitable is one analogous to the approach adopted to the ordination and induction of ministers in same sex relationships. Thus, the default would be that use of premises is not allowed unless a particular process has been followed to permit this.
- Allied to the immediately preceding point is the question of duration of any permission regarding use of premises – is this to be for each event, or for a set period, or unless and until rescinded?
- The topic of intrusion is also relevant: what is to happen where a minister or deacon authorised under section 9 is asked to conduct a SSM in the parish of a minister not so authorised?
- If a SSM is arranged, with a minister authorised under section 9, and that minister then moves to another charge, what is to be the position regarding the commitment if the new minister is not authorised under section 9 and does not wish to be?
- If a minister or deacon is authorised under section 9, and the church is permitted to be used, but a prospective participant does not wish to be involved, there may have to be specific arrangements made for the couple to be assisted to find a substitute (if, for example, the organist does not wish to play at the ceremony) or for designated individuals to be willing to step in (if, say, the church officer does not wish to be involved).

5.3 In conclusion, I note that the Episcopal Church, which has a more developed position on same sex marriage, has elected to follow the section 9 route under the Marriage (Scotland) Act 1977, has set out a Statement of Principles, and is producing guidance as to how, practically, arrangements for the conduct of same sex weddings are to be made. This template will be worth consulting, since it may provide practical examples of how challenges in formulating a position, both of principle and in practice, may be addressed.

LAURA J DUNLOP
18 February 2018
Advocates Library
Parliament House
Edinburgh

Appendix J

[] VIRTUAL ATTENDANCE AT MEETINGS ACT (ACT [] 2018)

Edinburgh, [] May 2018, Session []

The General Assembly enact and ordain as follows:

Definitions

1. In this Act, the following words shall have the following meanings:
 - (1) “Designated Body” shall mean a Council or Committee of the General Assembly, or a Presbytery, Kirk Session, Congregational Board, or other financial body existing in the constitution of a congregation.
 - (2) “Relevant Meeting” shall mean, subject to section 6 of this Act, a meeting called on the authority of any Designated Body.
 - (3) “Virtual Attendance” means that a person is not physically present at a Relevant Meeting, but instead is able to participate in the Relevant Meeting by means of a video and/or audio platform, in like manner to those who are

physically present. For the avoidance of doubt, in order to constitute Virtual Attendance the presence of such a person at a Relevant Meeting must entail: (a) the capacity for effective two-way communication, by visual and/or spoken means, between such a person and those physically present and with other people attending virtually; (b) the ability of such a person to engage in debate with, and to ask questions of, those who are physically present and others attending virtually, and to answer questions from them; and (c) the ability of such a person to cast a vote contemporaneously with those physically present and others attending virtually.

Permission for Virtual Attendance

2. (1) It shall be lawful for a Designated Body to resolve that at any subsequent Relevant Meeting(s) of the Designated Body, any person(s) is/are permitted to be in Virtual Attendance.
- (2) If and to the extent that a Designated Body resolves to permit Virtual Attendance, it shall mean that the person(s) in Virtual Attendance is/are deemed to be present at the Relevant Meeting for the purposes of Church law in the same way as if such person(s) had been physically present.
- (3) The Designated Body may make a resolution under this section to permit Virtual Attendance at all Relevant Meetings of that Designated Body, or may make such a resolution only for a specified Relevant Meeting or Relevant Meetings.
- (4) A decision to permit Virtual Attendance at all Relevant Meetings of a Designated Body may subsequently be revoked in respect of future Relevant Meetings.
- (5) For the avoidance of doubt, this section is permissive only and not directive.

Convener or Moderator at a Relevant Meeting

3. (1) It shall be the responsibility of the Convener or Moderator, as the case may be, of any Relevant Meeting where Virtual Attendance is permitted, to establish at the opening of the Relevant Meeting;
 - (a) the identity of any persons(s) who purport to be in Virtual Attendance, and
 - (b) that such a person(s) is/are in Virtual Attendance as defined in section 1, so that they are permitted to participate in the Relevant Meeting and have the right to vote
- (2) If at any time during a Relevant Meeting the continuing ability of a person in Virtual Attendance to participate in the Relevant Meeting in terms of sections 1 and 3(1)(b) is questioned, it shall be the responsibility of the Convener or Moderator to establish whether the person still meets the requirements of sections 1 and 3(1)(b) and if not to deem that person to have left the Relevant Meeting.
- (3) In all cases described in this section the decision of the Convener or Moderator, as the case may be, shall be final.
4. If the Convener, or Moderator, is in Virtual Attendance at a Relevant Meeting and becomes unable to participate in terms of sections 1 and 3(1)(b), then the Relevant Meeting shall either appoint an alternative Convener, or Moderator from amongst those attending, or else the Relevant Meeting shall be deemed to have ended. No substitute shall be so appointed unless qualified to perform the relevant function(s) in accordance with the standing law of the Church.

No appeal

5. Providing that a Relevant Meeting remains quorate, no failure of technology however caused, or decision to deem any person to be or not to be in Virtual Attendance or to have left the Relevant Meeting, shall invalidate the Relevant Meeting or any decision taken at the Relevant Meeting, nor shall any such matter be a ground for appeal against any decision taken at a Relevant Meeting.

Exception for Vacancy Procedure Act (Act VIII 2003)

- 6 This Act shall not apply to any Congregational Meetings held under the Vacancy Procedure Act (Act VIII 2003), in respect of which Virtual Attendance shall not at this time be permitted.

References

- [1] This to tie in with the Registration of Ministries Act and the way it deals with those who are out of parish ministry for over three years and who would at that point lose their category “O” registration
- [2] A quick guide to disposable capital and income is available from the Secretary to the Sub Committee.
- [3] From now on, I will use the abbreviations ‘DSM’ and ‘SSM’ to represent ‘different sex marriage’ and ‘same sex marriage’.
- [4] Sections 13 and 19.
- [5] Sections 34 and 35.
- [6] Section 38.
- [7] Sections 31(4) and 150(5).
- [8] Midwives’ argument, summarised in paragraph [31] of the Court’s decision.
- [9] See paragraph [24].
- [10] Except in relation to clergy of other denominations serving in the Church.