

VI INCOME PROTECTION AND ILL HEALTH ACT (ACT VI 2019) (AS AMENDED BY ACT IV 2020)

Edinburgh, 23 May 2019, Session 17

The General Assembly hereby enact and ordain as follows:

Definitions and Interpretation

1. For the purposes of this Act and the Schedule attached hereto:
 - (a) “absence” shall mean absence from duties through illness or ill health and “absent” shall be construed accordingly; absence for any other reason, including compassionate leave or study leave, shall be notified to the Presbytery and, in all cases except where this is not reasonably practicable, shall be subject to the permission of the Presbytery, but shall not be otherwise subject to the provisions of this Act;
 - (b) “the Council” shall mean the Ministries Council;
 - (c) “Ill Health Committee” shall mean a committee of three persons, comprising the Presbytery Clerk (or his or her appointed substitute), one member of the Presbytery of the bounds appointed for a fixed term to that office and one staff member of the Council;
 - (d) “Income Protection” shall mean insurance, with a deferred period of seventy eight weeks, to protect against loss of income due to long term ill health;
 - (e) “Income Protection Provider” shall mean the Church’s income protection provider for ministers from time to time;
 - (f) “Medical Assessment” shall mean an assessment from the Income Protection Provider of medical information supplied to the Income Protection Provider, which Medical Assessment may be indicative or final and which Medical Assessment shall give a view as to whether or not the minister is at that time (i) able or unable to perform his or her current role, and (ii) eligible or ineligible for Income Protection;
 - (g) a “minister” shall mean a minister inducted to a charge;
 - (h) “OHP Report” means a report prepared by an Occupational Health Physician appointed by the Council as to the ability of the minister to perform his or her current role;
 - (i) the phrase “return(s) to work” shall include a phased return;
 - (j) “Trigger Date” means the date on which a minister’s absence has extended to six months continuously, or has totalled 300 days out of any twenty two month period;
 - (k) “UK State Pension Age” shall mean a person’s UK State Pension Age as determined at the relevant time by the UK Government’s calculations¹;
 - (l) Where months are referred to, that means calendar months.
 - (m) The headings in this Act are for information only and do not form part of this Act.

Procedure for notifying illness

2. (1) Whenever a minister is absent from work due to illness, he or she shall inform the Council in terms of the Procedure appended as Schedule A to this Act.

¹ Ascertained currently by the calculator found on the gov.uk website

- (2) Failure to fulfil the requirements of Schedule A shall be intimated to the Presbytery, which may consider whether the minister is in desertion of his or her charge or whether any other matter of discipline has arisen.
3. The Presbytery shall be informed by its Clerk of the minister's absence (a) if an Interim Moderator is to be appointed, or (b) if the Presbytery requires to take any action in support or superintendence of the minister's congregation(s).

Pastoral support

4. The Council and the Presbytery shall work together throughout any period of absence of the minister to offer pastoral support, assistance and advice to the minister and to the affected congregation(s).
5. In relation to pastoral support of the minister, the following arrangements shall apply:
 - (1) Where an absence continues for three months or there have been several recent absences, the minister and the Council shall consult on the nature of his or her illness, and the extent to which it might be work-related;
 - (2) The Council may, through its staff members or through external support services, offer to provide the minister with access to support interventions appropriate to the circumstances of the minister's absence, which may include provision of reasonable adjustments, coaching, counselling, supervision, therapy, Access to Work provisions, and/or phased return.

Ill Health Committee

6. A Presbytery shall form an Ill Health Committee as required to deal with matters arising under this Act. Where a Committee is to be formed, the Presbytery shall request confirmation from the Council of the name of the staff member to appoint.

Minister's ill health – procedure for ministers eligible for Income Protection

7.
 - (1) Where the minister is of an age such that after Medical Assessment he or she might be eligible to receive Income Protection, the procedure set out in subsections 7(2) to (4) below shall apply.
 - (2) Following the Trigger Date:
 - (a) the Council shall as soon as practicable contact the minister to advise him or her of the terms of this Act and shall contact the Presbytery of the bounds to confirm that the provisions of this Act have been triggered;
 - (b) the Council shall as soon as practicable make a referral in respect of the minister to the Income Protection Provider, shall supply and facilitate provision of the required information to the Income Protection Provider and shall request that an indicative Medical Assessment on the minister is prepared; the minister shall co-operate in the preparation of any Medical Assessment and shall if required promptly sign any mandate required for the release of medical files and/or information to enable preparation of any Medical Assessment;
 - (c) once the indicative Medical Assessment is available, the Ill Health Committee shall meet with the minister as soon as possible, to discuss the indicative Medical Assessment and to consider whether or not the minister is likely to be able to return to work within six months after the Trigger Date;
 - (d) subject to section 7(4), if the minister returns to work no later than six months after the Trigger Date then no further process shall occur under this Act at that time;

- (e) if the minister does not return to work by the date six months after the Trigger Date, and does not choose to demit his or her charge with effect from a date which is at latest nine months after the Trigger Date, the Ill Health Committee shall, as soon as practicable, report to Presbytery that the pastoral tie should be severed with effect from the date nine months after the Trigger Date, save that the Ill Health Committee shall have discretion to report otherwise in the following situations:
 - (i) the minister is undergoing medical treatment and the prognosis is that he or she will be able to return to work imminently; or
 - (ii) the absence of the minister has resulted from more than one unrelated health cause in succession and it has not been possible to carry out a Medical Assessment for that reason.
 - (f) Following receipt of the Ill Health Committee's report under subsection 7(2)(e), the Presbytery shall meet within twenty one days to implement it. The outcome of the Presbytery meeting shall be intimated without delay to the minister.
 - (g) If the Presbytery does not sever the pastoral tie, it shall meet again at regular intervals thereafter to consider whether the pastoral tie should be severed. For the avoidance of doubt, if a minister is still absent at the date which is eighteen months after the Trigger Date, the Presbytery shall sever the pastoral tie with effect from eighteen months after the Trigger Date.
- (3) For the avoidance of doubt, the Presbytery may sever the pastoral tie whether or not the minister is, in terms of the final Medical Assessment, eligible for Income Protection.
 - (4) Where a minister returns to work in terms of this section 7 such that no further process occurs at that time, but then is absent again within the twenty two month period following the date of his or her return to work, absence which occurs within any rolling twenty two month period will be taken into account for the purposes of calculating a new Trigger Date.

Minister's ill health – procedure for ministers ineligible for Income Protection

- 8. (1) Where the minister is of an age such that he or she will not be eligible to receive Income Protection, the procedure set out in subsections 8(2) and (3) below shall apply.
- (2) Following the Trigger Date:
 - (a) the Council shall as soon as practicable contact the minister to advise him or her of the terms of this Act and shall contact the Presbytery of the bounds to confirm that the provisions of this Act have been triggered;
 - (b) the Council shall as soon as practicable make a referral in respect of the minister to an Occupational Health Physician appointed by the Council and shall request that an OHP Report on the minister is prepared; the minister shall co-operate in the preparation of the OHP Report and shall if required promptly sign any mandate required for the release of medical files and/or information to enable preparation of the OHP Report;
 - (c) once the OHP Report is available, the Ill Health Committee shall meet with the minister as soon as possible, to discuss the OHP Report and to consider whether or not the minister is likely to be able to return to work within six months after the Trigger Date;

- (d) subject to section 8(3), if the minister returns to work no later than six months after the Trigger Date then no further process shall occur under this Act at that time;
 - (e) if the minister does not return to work by the date six months after the Trigger Date, and does not choose to demit his or her charge with effect from a date which is at latest nine months after the Trigger Date, the Ill Health Committee shall, as soon as practicable, report to Presbytery that the pastoral tie should be severed with effect from the date nine months after the Trigger Date, save that the Ill Health Committee shall have discretion to report otherwise in the following situation:
 - (i) the minister is undergoing medical treatment and the prognosis is that he or she will be able to return to work imminently.
 - (f) Following receipt of the Ill Health Committee's report under subsection 8(2)(e), the Presbytery shall meet within twenty one days to implement it. The outcome of the Presbytery meeting shall be intimated without delay to the minister.
 - (g) If the Presbytery does not sever the pastoral tie, it shall meet again at regular intervals thereafter to consider whether the pastoral tie should be severed. For the avoidance of doubt, if a minister is still absent at the date which is eighteen months after the Trigger Date, the Presbytery shall sever the pastoral tie with effect from eighteen months after the Trigger Date.
- (3) Where a minister returns to work in terms of this section 8 such that no further process occurs at that time, but then is absent again within the twenty two month period following the date of his or her return to work, absence which occurs within any rolling twenty two month period will be taken into account for the purposes of calculating a new Trigger Date.

Stipend and Income Protection

9. (1) A minister who is absent in terms of this Act and who is eligible to be assessed for Income Protection benefit shall be considered as follows:
- (a) He or she shall be entitled to receive payment of an amount equivalent to (i) full stipend appropriate to the charge and years of service at the date absence commenced, (ii) the appropriate employer's pension contribution, and (iii) if applicable, Car Allowance, all subject to deduction of tax and National Insurance contributions, for one or other of the following periods:
 - (A) where this Act is triggered by six months' continuous absence, a maximum period of eighteen months in total from when the absence commenced, or
 - (B) where this Act is triggered by an absence of 300 days out of a twenty-two-month period, during that absence and then for a maximum further period of twelve months from the Trigger Date.
 - (b) Subject to sections 9(1)(c) and 9(1)(d), where such a minister is found, in terms of the final Medical Assessment, to be eligible for Income Protection, he or she shall be entitled to receive payment of an amount equivalent to one third of stipend appropriate to the charge and years of service at the date absence commenced (subject to appropriate deductions) plus the appropriate employer's pension contribution. Payment will begin on:
 - (i) where this Act is triggered by six months' continuous absence, the date eighteen months after absence commenced, or

- (ii) where this Act is triggered by an absence of 300 days out of a twenty-two-month period, the date twelve months after the Trigger Date.

Payment will continue until the minister is assessed by the Income Protection Provider as able to return to work, or as no longer eligible for Income Protection, or until the date of the minister's UK State Pension Age, whichever of the three is earliest.

- (c) During the whole time that a minister is in receipt of payments in terms of this section 9(1), the minister shall require to provide regular medical certificates (fit notes) to the Forum.
 - (d) The minister's eligibility for Income Protection will be determined according to the rules and procedures of the Income Protection Provider as they exist from time to time, which rules may include regular reassessment of the minister as to eligibility.
 - (e) The amount payable to the minister in terms of this section 9(1) may be reduced if income over a certain amount (determined by the Income Protection Provider) is earned by the minister while he or she is in receipt of payments under section 9(1).
- (2) A minister who is absent in terms of this Act and who is not eligible to be assessed for Income Protection benefit shall be considered as follows:
He or she shall be entitled to receive an amount equivalent to (i) full stipend appropriate to the charge and years of service at the date absence commenced, (ii) the appropriate employer's pension contribution, and (iii) if applicable, Car Allowance, all subject to deduction of tax and National Insurance contributions, for one or other of the following periods:
- (i) where this Act is triggered by six months' continuous absence, a maximum period of fifteen months in total from when the absence commenced, or
 - (ii) where this Act is triggered by an absence of 300 days out of a twenty-two-month period, during that absence and then for a maximum further period of nine months from the Trigger Date;
- (3) Notwithstanding sections 9(1) and (2), the Forum may agree that a minister who is absent in terms of this Act may, once payments under section 9(1) or (2) have expired and where the pastoral tie has not been severed, receive payment equivalent to one-third of stipend appropriate to the charge and years of service at the date absence commenced (subject to appropriate deductions) and employer's pension contribution, for such period as it may determine is appropriate, in its sole discretion, in the following circumstances:
- (a) the minister falls under section 8(1) and the Presbytery has not severed the pastoral tie because the minister is undergoing medical treatment and the prognosis is that he or she will be able to return to work imminently; or
 - (b) the absence of the minister has resulted from more than one unrelated health cause in succession and it has not yet been possible to carry out a Medical Assessment for that reason; or
 - (c) the minister is awaiting the outcome of a review/appeal under section 12(2) or 12(3);

Provided always that in no circumstances shall any payments be made beyond the date which is the earlier of (i) twenty-four months from when absence commenced or (ii) eighteen months from the Trigger Date.

Manse

10. (1) Wherever this Act applies and results in the minister demitting his or her charge or in the pastoral tie being severed, then subject to subsections (2)(a) and (b) below, the minister shall be entitled to remain in his or her manse for one or other of the following periods:
- (a) where this Act is triggered by six months' continuous absence, for a maximum period of fifteen months from the date when absence commenced, or
 - (b) where this Act is triggered by an absence of 300 days out of a twenty two month period, during that absence and then for a further period of nine months from the Trigger Date.
- (2) (a) Exceptionally, where the Ill Health Committee deems it to be necessary, the minister may remain in occupation of the manse for a further period of up to three months after the date ascertained by subsection 10(1) and that under the General Trustees' Standard Conditions for Occupation of a Manse on a Caretaker basis².
- (b) Alternatively, where subsections 7(2)(g) or 8(2)(g) apply, the minister may remain in occupation of the manse under the General Trustees' Standard Conditions for Occupation of a Manse on a Caretaker basis for one or other of the following periods:
- (i) where this Act is triggered by six months' continuous absence, for a maximum period of twenty seven months from the date when absence commenced, or
 - (ii) where this Act is triggered by an absence of 300 days out of a twenty two month period, during that absence and then for a further period of twenty one months from the Trigger Date.

Confidentiality

11. The Ill Health Committee shall conduct its proceedings and hold meetings in private and shall treat all its information and discussions in confidence. Meetings shall be minuted and the minute held in a Record Apart. For the avoidance of doubt, the Ill Health Committee shall retain in confidence all Medical Assessments received and shall not, without consent of the minister, divulge details to any person other than the minister.

Appeals

12. (1) An appeal against a decision of the Presbytery taken in terms of section 7(2)(f) or (g) or 8(2)(f) or (g) of this Act may be brought by a minister on the following grounds: (a) material irregularity of process; or (b) decision influenced by incorrect material fact. The intention to appeal must be intimated to the Principal Clerk by the minister within fourteen days of the date on which the Presbytery's decision was intimated to the minister. The appeal shall be heard by the Ministries Appeal Panel in terms of the Ministries Appeal Panel Act (Act VI 2007). For the avoidance of doubt:
- (a) no appeal may be brought as to the terms of an indicative Medical Assessment; and

² The minister shall be entitled to make application at any time following the Trigger Date for assistance with housing to the Housing and Loan Fund who will determine according to its own criteria and rules, whether assistance can be provided to the minister.

- (b) the terms of a final Medical Assessment or of an OHP Report may only be appealed as referred to in sections 12(2) and 12(3) below respectively.
- (2) A minister who is aggrieved at the terms of a final Medical Assessment may ask the Council to invoke the Income Protection Provider's appeals process, in which case the Council, if it agrees, may do so, and the decision of the Income Protection Provider on the matter after the appeals process has been completed shall be final. To initiate this process, the minister must make a written request to the Council to invoke the Income Protection Provider's appeals process within fourteen days of receiving the final Medical Assessment.
- (3) A minister who is aggrieved at the terms of an OHP Report may contact the Ill Health Committee to request that the Ill Health Committee review the terms of the OHP Report with the Occupational Health Physician but the report of the Ill Health Committee to the Presbytery on the matter after such review shall be final. To initiate this process, the minister must make a written request to the Ill Health Committee within fourteen days of receiving the OHP Report.
- (4) No appeals save as stated in sections 12(1), 12(2) and 12(3) shall be available in respect of matters covered by this Act.

Registration of Ministries

- 13. Where in terms of this Act a minister demits his or her charge or a pastoral tie is severed, the minister shall thereafter be registered on the Register of Ministry in Category R or Category I, the decision as to which category being determined by the Ill Health Committee or the Presbytery, as appropriate. The normal rights of appeal against the decision of the Ill Health Committee or the Presbytery, as the case may be, (as set out in the Registration of Ministries Act (Act II 2017)) shall be available to the minister.

Meetings

- 14. Meetings between the Ill Health Committee and the minister may take place by conference call, video conference call or other appropriate medium.

Commencement of this Act

- 15. This Act shall come into force when passed. From that date it shall apply to any minister who is of an age such that he or she will not be eligible to receive income protection in terms of existing arrangements made by the Council. For a minister who is of an age to fall within section 7 of this Act, it shall apply to any minister whose Trigger Date is on or after 1 July 2020, and prior to that date such a minister shall remain subject to the terms of the Long Term Illness of Ministers Act (Act XV 2002).

Repeal

- 16. The Long Term Illness of Ministers Act (Act XV 2002) shall remain in force until such time as all ministers who are absent are being assessed in terms of this Act, at which point it shall be repealed.

Schedule A

Procedure for notifying a minister's absence to the Council

1. (1) Whenever a minister is absent through illness, then such minister, or his or her appointed nominee, shall, within seven days of the first day of absence, notify the Secretary of the Council in writing.
- (2) Where an absence continues for more than seven days, the minister, or his or her appointed nominee, shall, within fourteen days of the first day of absence, provide a medical certificate to the Secretary of the Council.
- (3) The minister, or his or her appointed nominee, shall continue to provide medical certificates covering the whole period of absence, and a final medical certificate showing the date of return to work, throughout the whole period of absence, each such medical certificate to be sent to the Secretary of the Council within seven days of its date of issue.
2. Whenever the Council is initially informed by a minister of his or her absence due to illness, it shall notify both the Clerk to the Presbytery of the bounds and the Payroll Unit of the General Treasurers' Department.
3. The Council shall maintain the appropriate absence records and shall provide information to the Presbytery upon request.