

**III. DISCIPLINE OF MINISTRY ACT (AS AMENDED BY ACTS III AND IX 2002 AND III 2003, X 2004, III 2005, XVI 2006, I AND II 2007, VII 2008, I 2009, III, 2010, III 2011, I AND VI 2012, II 2013, II 2014, III 2015, II 2017 AND IV 2018)**

*Edinburgh, 19 May 2001, Session I*

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

**Part 1 Introduction**

1. (1) For the purposes of this Act:
  - (a) “Disciplinary offence” shall mean
    - (i) conduct which is declared censurable by the Word of God, Act of the General Assembly or established custom of the Church or
    - (ii) a breach of a lawful order of any court of the Church.
  - (b) “investigatory proceedings” shall mean those proceedings carried out in accordance with the provisions of Part 3 of this Act in respect of any disciplinary offence alleged to have been committed by a Minister, Licentiate, Graduate Candidate or Deacon.
  - (c) “disciplinary proceedings” shall mean those proceedings carried out in accordance with the provisions of Part 4 of this Act in respect of any disciplinary offence alleged to have been committed by a Minister, Licentiate, Graduate Candidate or Deacon.
  - (d) “Special Committee of Presbytery” shall mean a Committee of three persons appointed from the Judicial Proceedings Panel in terms of section 4(1) of whom at least one will be a minister and one an elder.
  - (e) “The Judicial Proceedings Panel” shall mean a list of ministers, elders or deacons duly appointed by the General Assembly, through the nomination procedure. In making appointments to the Judicial Proceedings Panel, the General Assembly’s Nomination Committee will seek to appoint ministers, elders and deacons who are suitably experienced in the law and practice of the Church. Appointments shall be for three years with the option of serving further consecutive terms. The Legal Questions Committee shall, from time to time, determine how many ministers, elders and deacons are required to populate the Panel and will arrange for the provision of training and support for those selected to take part in this work.
  - (f) A member of the Judicial Proceedings Panel who, at the expiry of his or her elected membership of the Panel is a member of a Special Committee of Presbytery whose work is not yet completed, shall be deemed to continue as a member of the Panel. His or her membership of the Special Committee shall continue uninterrupted until the Special Committee’s work is completed at which time his or her deemed membership of the Panel shall also end.
  - (g) “Presbyterial Panel” shall mean a list of ministers, elders or deacons submitted by Presbyteries in accordance with the following procedure. Every Presbytery, with the exception of the Presbytery of Jerusalem, shall be entitled to appoint one person in respect of every one hundred members, or part thereof, of the Presbytery, to form the Presbyterial Panel. Such appointments shall be made annually with effect from 1st July, shall

subsist for one year and shall be intimated in advance to the Principal Clerk. Persons may be re-appointed up to a maximum of three times. Elders so appointed need not be members of the Presbytery, but shall be members of Kirk Sessions within the bounds of the Presbytery. Ministers or deacons so appointed shall be in full membership of the Presbytery. Where it is reasonable so to do, Presbyteries shall appoint equal numbers of men and women to the Presbyterial Panel.

- (h) “Presbyterial Commission” shall mean a body of five persons, three of whom shall be selected from the Presbyterial Panel randomly as provided for in terms of section 10(2), but so as to ensure that at least one of the three shall be a Minister, together with a Convener and Vice-Convener appointed by the General Assembly on the Report of the Nomination Committee, both of whom shall be qualified to practise as a lawyer. An alternate Convener and Vice-Convener, qualified as aforesaid, shall be appointed at the same time, but if for any case a further alternate shall be required, the Secretary to the Commission shall consult with the Convener of the Nomination Committee for a further appointment. The Solicitor of the Church shall normally serve as Secretary to Presbyterial Commissions, 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 Commission.
  - (i) “Respondent” shall for the purposes of this Act only mean the Minister, Licentiate, Graduate Candidate or Deacon (i.e. member of the Diaconate), as described in paragraphs (b) and (c).
  - (j) “censure” shall mean one or more of:
    - (i) reprimand, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct;
    - (ii) suspension from the status and functions of ministry for a fixed period. Suspension may only be lifted in accordance with section 28 of the Registration of Ministries Act (Act II 2017) upon application by the Respondent.
    - (iii) suspension from the status and functions of ministry without limit of time but subject to a minimum period of suspension to be determined by the Presbyterial Commission when passing censure upon the Respondent in terms of section 18(2) hereof. Suspension may only be lifted in accordance with section 28 of the Registration of Ministries Act (Act II 2017) upon application by the Respondent.
    - (iv) removal of status, subject to restoration only by application in terms of Act IX, 2002.
  - (k) “administrative suspension” shall mean an instruction by a Presbytery to an individual under its jurisdiction to abstain from the exercise of all the functions of his or her office as minister or deacon until proceedings under this Act are finally disposed of; it shall not constitute a form of censure.
- (2) Throughout this Act the singular shall include the plural where applicable.
  - (3) For the avoidance of doubt 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.

- (4) For the avoidance of doubt it is declared that nothing in this Act shall reduce the general power of the Presbytery to impose an administrative suspension on any individual subject to its jurisdiction in terms of this Act at any time.
2.
    - (1) All investigatory proceedings shall be initiated by the Presbytery having jurisdiction in terms of this section.
    - (2) Ministers and Deacons shall be subject to the jurisdiction of the Presbytery of which they are members and that notwithstanding that they may reside beyond the bounds.
    - (3) Ministers and Deacons who are not members of any Presbytery shall be subject to the jurisdiction of the Presbytery within whose bounds they normally reside.
    - (4) Licentiates shall be subject to the jurisdiction of the Presbytery which licensed them or to which they have been regularly transferred.
    - (5) A Graduate Candidate shall be subject to the jurisdiction of the Presbytery in whose bounds is situated the congregation of which he or she is a communicant member in terms of section 22 of Act X 2004.
  3.
    - (1) A Presbytery may initiate investigatory proceedings whenever there come to the notice of the Presbytery circumstances indicating that a disciplinary offence may have been committed. The Presbytery, or any Committee or individuals holding delegated powers from Presbytery so to do, shall be entitled at its or their discretion to suspend the Respondent immediately from carrying out the functions of his or her office and/or from undertaking ministerial functions generally, which suspension shall be administrative only, and the Presbytery shall be entitled, where appropriate, to appoint an Interim Moderator to the Respondent's charge. This entitlement shall be without prejudice to the general power of Presbytery described in section 1(4) above.
    - (2) Should circumstances indicating a possible disciplinary offence come to the notice of a Presbytery other than that having jurisdiction in terms of section 2, it shall communicate the same to the Presbytery having jurisdiction together with all information pertaining thereto in its possession.
    - (3) It shall be a disciplinary offence for any member of Presbytery to issue press statements or otherwise talk to the media about an alleged disciplinary offence after the Presbytery receives notice of an alleged offence until the conclusion of any disciplinary proceedings and any appeals relating thereto.
    - (4) 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 (i) any act, default or omission, or (ii) 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).

## **Part 2 Initial Consideration**

4. (1) On receiving notice of circumstances indicating that a disciplinary offence may have been committed, a Presbytery shall appoint from the Judicial Proceedings Panel a Special Committee to consider the circumstances, and, if appropriate, to investigate and prosecute the case. For the avoidance of doubt, a Presbytery shall not select anyone to serve on a Special Committee who is a member of their own Presbytery. In the exercise of any of its functions in terms of this Act, the Special Committee shall have all the powers of Presbytery. Except insofar as provided herein, the Presbytery shall have no further part in the proceedings.
- (2) In considering whether to carry out an investigation the Special Committee of Presbytery shall consider whether all or any of the allegations made are frivolous, vexatious and/or without merit.
- (3) (a) Where the Special Committee of Presbytery decides that all or any of the allegations are frivolous, vexatious and/or without merit and that it is accordingly not appropriate to carry out an investigation in respect of all or any of the allegations made, the Special Committee of Presbytery shall report its decision to reject the complaint or parts thereof (as appropriate) to the Presbytery and at the same time shall advise the person or persons (if any) who made the allegation or allegations of its decision and the reasons for it.
- (b) For the avoidance of doubt a decision that it is not appropriate to carry out an investigation into all or any of the allegations made shall not be subject to appeal or dissent and complaint or any other form of review other than a procedural review carried out by three members of the Judicial Proceedings Panel appointed by the Legal Questions Committee.
- (c) Said review must be requested by the person or persons who made the allegation or allegations within fourteen days of the date upon which the Special Committee of Presbytery reported its decision to such persons.
- (d) 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 (as specified at sub-paragraph (f) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
- (e) In intimating its decision to the person or person who made the allegation or allegations, the Special Committee of Presbytery shall advise of the right to a procedural review.
- (f) A procedural review can be sought only on one or both of the following grounds: (a) that there was an irregularity or breach of the principles of natural justice in the process followed by the Special Committee which materially influenced its decision; and, (b) that its decision was materially influenced by some incorrect fact.

- (g) In the event that the persons so appointed to carry out such a procedural review determine that one or both of the foregoing grounds have been established, they shall order a new investigation to be carried out by a different Special Committee of Presbytery selected from the Judicial Proceedings Panel.
- (h) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review.

### **Part 3 Investigatory Proceedings**

5. (1) If the Special Committee of Presbytery decides to initiate investigatory proceedings it shall:
  - (a) intimate in writing to the person who is the subject of the allegation (“the Respondent”) the nature of the offence alleged and the nature of the evidence purported to exist in support of the allegation and shall offer him or her the opportunity to make any answer thereto, provided that he or she shall not be obliged to answer;
  - (b) give notice to the Presbytery of that decision and of the allegation or allegations which are to be investigated; and
  - (c) give notice to the Legal Questions Committee, which shall appoint a legally qualified assessor to advise the Special Committee of Presbytery on matters of law and procedure.
- (2) On receipt of the notice referred to in section 5(1)(b), the Presbytery shall make such arrangements as appear to it appropriate for the provision of pastoral support for the Respondent and his or her family, for the person or persons who made the allegation and for any witnesses within the bounds of the Presbytery.
6. (1) The Special Committee of Presbytery shall carry out such investigations as it deems necessary to determine whether a disciplinary offence may have been committed. Such investigations shall normally be concluded within 56 days of the date on which notice is given to the Presbytery in terms of section 5(1)(b) hereof but the Presbytery or any Committee or individuals holding delegated powers from the Presbytery so to do shall have power on cause shown by the Special Committee or the Respondent to grant a further period or periods for completion of the investigation.
- (2) In all cases under this Act the Presbytery shall keep a Record Apart of the investigatory proceedings. The Record Apart shall comprise all evidence obtained by the Special Committee of Presbytery including witness statements, and a transcript or recording of the evidence given at any hearing.
7. Before reaching any conclusion on whether a disciplinary offence may have been committed, the Special Committee of Presbytery shall make known to the person against whom the allegation has been made the substance of the complaint being considered by the Special Committee and the nature of the evidence existing in support of the allegation and shall offer him or her the opportunity to make any answer thereto; provided that he or she shall not be obliged to answer.

8.
  - (a) Upon consideration of the allegations and evidence submitted and of any answers given, the Special Committee shall be entitled to resolve that no further investigation shall be carried out if there is no *prima facie* case to answer. In that event it shall report to the Presbytery which shall recall any administrative suspension imposed in terms of section 3(1). At the same time the Special Committee shall also advise the person or persons (if any) who made the allegation or allegations of its decision and the reasons for it.
  - (b) At such time, the Special Committee may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in the Record Apart referred to in section 6(2) of this Act.
  - (c) For the avoidance of doubt a decision that it is not appropriate to carry out an investigation into all or any of the allegations made shall not be subject to appeal or dissent and complaint or any other form of review other than a procedural review carried out by three members of the Judicial Proceedings Panel appointed by the Legal Questions Committee.
  - (d) Said review must be requested by the person or persons who made the allegation or allegations within fourteen days of the date upon which the Special Committee of Presbytery reported its decision to such persons.
  - (e) 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 (as specified at sub-paragraph (g) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
  - (f) In intimating its decision to the person or person who made the allegation or allegations, the Special Committee of Presbytery shall advise of the right to a procedural review.
  - (g) A procedural review can be sought only on one or both of the following grounds:
    - (a) that there was an irregularity or breach of the principles of natural justice in the process followed by the Special Committee which materially influenced its decision; and,
    - (b) that its decision was materially influenced by some incorrect fact.
  - (h) In the event that the persons so appointed to carry out such a procedural review determine that one or both of the foregoing grounds have been established, they shall order a new investigation to be carried out by a different Special Committee of Presbytery selected from the Judicial Proceedings Panel.
  - (i) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review.
9.
  - (1) In the event that the Special Committee of Presbytery decides to initiate disciplinary proceedings it shall prepare (a) a Notice of Complaint setting forth the alleged disciplinary offence or 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 Special Committee of Presbytery and will be in such form that, in respect of each offence, there is set out the time and place of the disciplinary offence and the facts necessary to constitute the disciplinary offence.

#### **Part 4 Disciplinary Proceedings**

10. (1) The Special Committee of Presbytery shall initiate disciplinary proceedings by lodging with the Solicitor of the Church:
    - (a) a Notice of Complaint setting forth one or more charges;
    - (b) a list of the names and addresses of the witnesses to be adduced by the Special Committee of Presbytery;
    - (c) a list of the productions to be put in evidence by the Special Committee of Presbytery; and
    - (d) a request to appoint a first diet and to grant a warrant to the Special Committee of Presbytery 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 Presbyterial Commission in terms of section 1(1)(h) and shall, thereafter, in the name of the Commission, pronounce an Order –
    - (a) fixing 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) granting warrant for service of the Notice of Complaint on, and intimation of the first diet and a list of the names of those selected to serve on the Presbyterial Commission to, the Respondent within such period as he or she shall appoint.
  - (3) The Special Committee of Presbytery 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 recorded delivery 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 9(1)(b).
  - (4) In the event that service of the Notice of Complaint has not been timeously or regularly effected the Solicitor shall as aforesaid
    - (a) grant warrant for the re-service of 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.
11. (1) The first diet will be held before the Presbyterial Commission.
  - (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 Presbyterial Commission:

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 Special Committee of Presbytery and the Presbyterial Commission not later than 24 hours before the diet is due to be held and any challenge made in terms of this sub-section shall ordinarily be disposed of immediately unless the Presbyterial Commission considers that the matter cannot be decided without proof.

- (3) The Presbyterial Commission may –
  - (a) adjourn the first diet for whatever 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 it thinks 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.
- (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 such individual charges, if any, which remain on the Notice of Complaint.
- (5) Where the Respondent admits all the individual charges brought the Presbyterial Commission shall, after hearing and considering any statement by the Special Committee, 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 their decision in a document signed by the Convener.
- (6) Where the Respondent denies some or all of the charges brought, the Presbyterial Commission 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 Special Committee of Presbytery 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 Special Committee of Presbytery.
- (7) The date appointed for proof shall be not less than 28 days nor more than 56 days after the first diet or any adjournment thereof, but the Presbyterial Commission 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 Presbyterial Commission has appointed a date for proof, it may make an Order requiring the Respondent to intimate to the Presbyterial Commission and to the Special Committee of Presbytery within such period as it 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 Special Committee of Presbytery and to the Presbyterial Commission (i) that there is no challenge in terms of subsection (2) hereof and (ii) that the charge or charges on the Notice of Complaint are all denied, and (b) both the Special Committee of Presbytery and the Respondent intimate in writing to the Commission 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 Commission shall appoint a date for the proof of the charge or charges and make any order in terms of subsection (8) hereof.

12. The first diet and proof shall take place in public except (a) where either the Special Committee of Presbytery or the Respondent request that, and show cause why, the hearing, or part thereof, be held in private, or (b) where the hearing of evidence from any person, or narration of facts thereof, in the opinion of the Presbyterial Commission 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 Presbyterial Commission shall restrict publicity only to the extent strictly necessary.
13. If a party fails to attend or be represented at the time and place fixed for the proof, the Presbyterial Commission may (a) adjourn the proof to a later date; (b) if that party is the Special Committee of Presbytery, 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.
14.
  - (1) The rules of civil evidence in Scots law shall apply and the standard of proof shall be the balance of probabilities. 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 recorded. The shorthand writer or technician shall be sworn by the Convener prior to the commencement of the hearing.
  - (3) If produced by either party, the notices issued by the Special Committee of Presbytery in terms of section 5(1)(a) and/or section 7 hereof and any answers thereto by the Respondent shall be admissible in evidence.
  - (4) In subsection (2) "The proceedings at the proof" shall, unless the Presbyterial Commission shall direct 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 Presbyterial Commission on any such matter, (b) the evidence led at the proof and (c) the speeches of the parties or their counsel or solicitors on their behalf.
15. Each party shall be entitled to give evidence, to call witnesses, to question any witness and to address the Presbyterial Commission, provided that the Respondent shall have the right to speak last.
16. Subject to sections 14 and 15, the conduct of the proof shall be in such manner as the Presbyterial Commission considers most appropriate for the determination of the issues before it and to the just handling of the proceedings.
17.
  - (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 Presbyterial Commission, unless the Presbyterial Commission 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.
  - (3) Nothing in this section shall authorise an amendment which changes the character of the charge or charges, and, if it appears to the Presbyterial Commission 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 Presbyterial Commission shall grant such remedy to the Respondent by adjournment or otherwise as appears to the Presbyterial Commission to be just.
18. (1) At the close of the proof the Presbyterial Commission 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 Presbyterial Commission 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 11(6)), after hearing and considering any statement by the Special Committee and the Respondent in mitigation, the Presbyterial Commission shall pass such censure if any upon the Respondent as appears to it appropriate according to the circumstances of each charge.
- (3) After giving its decision in terms of subsection (1), the Presbyterial Commission 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 Presbyterial Commission 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 Presbyterial Commission shall send the documents referred to in subsections (1) and (3) to each of the parties, the Presbytery Clerk and the Principal Clerk of the General Assembly and shall make them available for public inspection.

**Part 4A Accelerated Procedure where the Respondent desires to admit allegation(s)**

- 18A (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 allegation or allegations made against him or her, he or she shall be entitled so to intimate to the Special Committee of Presbytery. 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 Special Committee in the absence of a statement that legal advice has been received. In the event that the Special Committee is willing to accept the said admission, either immediately or after making such other enquiries or investigations it considers appropriate, it shall as soon as practicable proceed to adjust and agree a Joint Minute with the Respondent or his or her Counsel or Solicitor. Said Joint Minute which shall be signed by or on behalf of both parties shall set out:

- (a) the disciplinary offence or 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 Presbyterial Commission to assist it in reaching an appropriate disposal of the case.

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

- (2) The Special Committee 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 Presbyterial Commission in terms of section 1(1)(h). The Solicitor shall thereafter in name of the Commission pronounce an Order fixing a date for a diet before the Commission, being a date not earlier than fourteen days after the date of intimation thereof. The Solicitor shall intimate the said Order to the Special Committee and the Respondent and his or her Counsel or Solicitor.
- (3) At the said diet, the Presbyterial Commission shall, after hearing and considering any statement by the Special Committee 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 Commission 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.
- (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 Special Committee and the Commission, the diet shall be adjourned and thereafter the case shall proceed as directed by the Commission in accordance with the other provisions of this Act.

## **Part 5 Appeals**

- 19. (1) If either the Special Committee of Presbytery or the Respondent is dissatisfied with any decision of the Presbyterial Commission, 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.
- (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.

## **Part 6 Subsequent Process**

20. The Presbytery shall meet within not less than twenty-one and not more than thirty-five days after receiving intimation of the written decision of the Presbyterial Commission or, in the event of an appeal being taken, after receiving intimation of the judgement of the Judicial Commission or the General Assembly and –
- (1) In the event that the decision has not involved suspension or removal from office, it shall
    - (a) lift the administrative suspension upon the person;
    - (b) relieve the Interim Moderator of duty;
    - (c) undertake such steps of discipline against other individuals and superintendence of its members and congregations as it finds necessary.
  - (2) In the event that the decision involved (i) a suspension of such length that, in the judgement of the Presbytery, the pastoral tie requires to be terminated, or (ii) the removal of the status of the Respondent.
    - (a) any parish of which the person was minister shall be deemed to have become vacant on the date of the meeting of Presbytery and any other ordained appointment which he or she occupied shall terminate on that date;
    - (b) the appointment of an interim Moderator shall be confirmed or a new appointment made;
    - (c) the Presbytery shall undertake such steps of discipline against other individuals and superintendence of its members and congregations as it finds necessary.
  - (3) In the event that the decision involved a suspension which is not of such a length that the pastoral tie is to be terminated
    - (a) the appointment of an interim Moderator shall be confirmed or a new appointment made;
    - (b) the Presbytery shall undertake such steps of discipline against other individuals and superintendence of its members and congregations as it finds necessary.
  - (4) This section shall apply *mutatis mutandis* to Deacons.

## **Part 7 Miscellaneous**

21. The Special Committee of Presbytery and the Respondent may be represented by counsel and/or solicitor at any stage of the investigatory proceedings, disciplinary proceedings or appeal.
22. 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, the expenses of the Special Committee of Presbytery and the Respondent in the conduct of proceedings under this Act and any appeal following thereon, and the necessary expenses of witnesses, as the same may be taxed by the Auditor of the Court of Session, after hearing parties, shall be met from the central funds of the Church, but only as follows:
- (1) Expenses shall be paid on the basis of the current Tables of Fees of Solicitors and witnesses in the Sheriff Court in civil causes on a party and party basis only.

Any provision in such Table of Fees for a percentage or other increase in fees shall not apply.

- (2) The costs of legal advice or representation by a solicitor shall be payable in terms of sub-section (1). Counsel's fees shall be paid from the funds of the Church only if, and to the extent to which, the employment of counsel has been sanctioned in terms of sub-section (3) or sub-section (4).
- (3)
  - (a) When a Notice of Complaint has been lodged with the Solicitor of the Church in terms of section 10, and as soon as he or she has identified the Convener and Vice-Convener of the Presbyterial Panel to hear the case, the Special Committee of Presbytery or the Respondent may apply to the Solicitor for permission to employ counsel to advise or represent them.
  - (b) On receipt of any such application, the Solicitor shall arrange for a hearing before one Convener and Vice-Convener of the Presbyterial Commission, not being the Convener and Vice-Convener who will serve on the Commission chosen to hear the case; and at the hearing all parties shall be entitled to be present and make representations. The Convener and Vice-Convener shall, after hearing parties, decide whether to sanction the payment of counsel and, if they do so, they shall specify whether it be for junior counsel only, senior counsel only, or both senior and junior counsel, and whether for the whole case up to the final judgement of the Presbyterial Commission, or only for part thereof.
  - (c) Authorisation in terms of paragraph (b) above may be made retrospective, in respect of legal advice.
- (4)
  - (a) When Grounds of Appeal have been lodged with the Principal Clerk in terms of section 19 of this Act, the Appellant or Special Committee of Presbytery may apply to the Principal Clerk for permission to employ counsel to advise or represent them.
  - (b) On receipt of any such application, the Principal Clerk shall arrange for a hearing before one Convener and Vice-Convener of the Presbyterial Commission, who may not be the Convener and Vice-Convener who served on the Commission which heard the case, but who may be the same Convener and Vice-Convener who heard an application in terms of sub-section (3)(b) above; and at this hearing all parties shall be entitled to be present and make representations. The Convener and Vice-Convener shall, after hearing parties, decide whether to sanction the payment of counsel and, if they do so, they shall specify whether it be for junior counsel only, senior counsel only, or both senior and junior counsel, and whether for the whole appeal or only for part thereof.
  - (c) For the avoidance of doubt, the Convener and Vice-Convener acting in terms of subsection (4)(b) shall not have power to authorise any expenditure prior to the lodging of the Grounds of Appeal.
- (5) For the purposes of this section all references to 'junior counsel' shall be deemed to refer also to solicitor advocates.
- (6) There shall be no right of appeal against any decision made in terms of this section.

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 I 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 I 2018).

23. Where in the view of the Commission it is necessary so to do to ensure the interests of justice, on the motion of either party or *ex proprio motu*, the Presbyterial Commission shall have power to order either party to produce within such period as the Commission 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.
24. The Presbyterial Commission 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 such other excusable cause on such conditions as the Commission thinks fit.
25. The Legal Questions Committee shall have power to make regulations to regulate and prescribe the practice and procedure to be followed in any proceedings brought before the Presbyterial Commission 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.
26. No member of the Presbyterial Commission 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.
27. Act II 1988 anent the Judicial Commission is amended as follows:-

*Amend section 3 to read as follows:-*

In terms of section 1 above, the Judicial Commission shall hear Appeals against the decisions of Presbyterial Commissions in cases relating to discipline of Ministers, Licentiates, Graduate Candidates and Deacons except in matters of doctrine. The findings and final judgement of the Judicial Commission in Appeals in terms of this section shall be incorporated in a written Report to the General Assembly, but shall not be subject to review by the General Assembly.

*Amend the Rules of Procedure rule 2 as follows:-*

After "Inferior Court" add "or Presbyterial Commission".

*Amend Rules of Procedure rule 3 as follows:-*

Add at the end the words ", except as excluded by the Act Anent Discipline of Ministers, Licentiates, Graduate Candidates and Deacons [Act III 2001]".

*Amend the first sentence of Rules of Procedure rule 4 to read:-*

"In Appeals arising under the Act Anent Discipline of Ministers, Licentiates, Graduate Candidates and Deacons [Act III 2001] the Secretary of the Presbyterial Commission shall within fourteen days of the receipt of the written statement of Appeal transmit to the Clerks of the Judicial Commission the written statement of Appeal, the Notice of Complaint, Notice of Special Defence, if any, productions, transcript of evidence, and the whole record of proceedings".

*Amend Rules of Procedure rule 8 as follows:-*

In the second sentence delete the first occurrence of the word "The" and substitute "An".

*Amend Rules of Procedure rule 10 as follows:-*

After "the Inferior Court" add ", the Presbyterial Commission".

28. Act VII 1935 anent Trials by Libel is hereby repealed. Act XIX 1889 shall not apply in relation to proceedings under this Act.