

**APPEALS ACT (ACT I 2014) (superseding Interim Act II 2013) (AS AMENDED BY ACT VII 2015, ACT XII 2017 AND ACT III 2018)**

*Edinburgh, 17 May 2014, Session I*

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

**PART 1: GENERAL**

**1. Definitions & Interpretation**

In this Act:

“appeal” includes “dissent and complaint” and a petition as referred to in section 4(2)(iii) of this Act, unless otherwise provided, and “Appellant” includes “complainer”;

“Appeals Committee” means the committee established from time to time from the members of the Commission of Assembly in accordance with Part 2 of this Act;

“Clerks of Assembly” means the Principal Clerk and the Depute Clerk;

“Commission” means the Appeals Committee of the Commission of Assembly or the Judicial Commission, as appropriate in the context;

“Commission of Assembly” means the Commission of Assembly which was established in terms of the Commission of Assembly Act (Act VI 1997);

“Court” does not include the General Assembly nor the Commission of Assembly but shall include any other body, including a Presbyterial Commission, against whose decision an appeal is being taken;

“Judicial Commission” means the Judicial Commission which is re-established in terms of this Act;

“Jurisdiction Committee” means a committee of three persons consisting of (i) a Convener or Vice-Convener of the Appeals Committee of the Commission of Assembly, (ii) a Convener or Vice-Convener of the Judicial Commission, and (iii) the Procurator;

“Personal Case” means a case which involves the consideration of allegations against an individual which, if established, could adversely affect that individual's holding of an office in the Church or otherwise lower him or her in the estimation of other members of the Church;

“Parties” means the Appellant and the Respondent (as later defined) and “Party” means either one of them;

“Schedule” means the schedule of 2 parts attached to this Act.

**2. Right to appeal from decisions**

(1) As from the date of this Act, and subject to the exclusions and qualifications in sections 2(3) and 2(4) below, a person with a legitimate interest who is aggrieved by a decision of a Court (“the Appellant”) may within fourteen days of the decision intimate an appeal against that decision.

(2) Such an appeal shall be intimated in accordance with the Rules of Procedure set out in Schedule 2 to this Act.

(3) Such an appeal may be taken only upon one or more of the following legal grounds: (a) an error in Church law; (b) breach of the principles of natural justice or material irregularity of process; (c) decision influenced by incorrect material fact; and (d) the severity of any sanction imposed. In addition, in the case of an appeal under the Appraisal and Adjustment Act (Act VII 2003), the additional legal ground specified in sections 6(1) and 9(2)(vi) of that Act shall apply.

(4) The right of appeal conferred in section 2(1) does not apply where the Acts and Regulations of the General Assembly specifically provide another appeal procedure.

(5) The Court against whose decision an appeal is being taken under this Act shall have power, on its own initiative or on the application of an interested person, to regulate matters relating to the decision, including giving interim effect to the decision, pending the determination of the appeal.

### **3. Establishment of the Appeals Committee of the Commission of Assembly and the Judicial Commission**

(1) The Appeals Committee of the Commission of Assembly is hereby established and the Judicial Commission is hereby re-established and both are authorised, to act for and on behalf of the General Assembly in the hearing of certain appeals, and adjudicating finally on such appeals, all as specified in this Act.

(2) For this purpose the General Assembly delegate to the said Commissions all powers necessary to act in such cases as if the General Assembly themselves were acting, including *inter alia* power, where necessary, to require the attendance of witnesses, to examine witnesses on oath or affirmation, and to call for the production of all documents and productions connected with or relevant to the appeal.

(3) It is declared that this delegation of all powers to act and to adjudicate finally is in accordance with the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual, as interpreted by the Church in this Act.

(4) Nothing in this Act shall affect the ongoing establishment of the Commission of Assembly in terms of Act VI 1997 and in particular the right of the Commission of Assembly to exercise its powers in terms of section 5(1) of that Act, provided always that in relation to cases and appeals, the whole provisions of this Act, which have the effect of constituting an Appeals Committee of the Commission of Assembly to hear such cases and appeals, shall prevail.

### **4. Jurisdiction of the Appeals Committee of the Commission of Assembly and the Judicial Commission**

(1) As from the date of this Act, sittings of the Appeals Committee of the Commission of Assembly and of the Judicial Commission shall be arranged to hear cases as set out in this section.

(2) The Appeals Committee of the Commission of Assembly shall hear the following cases:

- (i) all appeals, apart from those delegated to the Judicial Commission in accordance with section 4(3) below or to the Ministries Appeal Panel in accordance with Act VI 2007;
- (ii) all appeals (or requests for determination) in terms of the Appraisal and Adjustment Act (Act VII 2003);
- (iii) all petitions which seek review of judgements of Presbyteries on the grounds that the Petitioners could not have come by appeal or have been obstructed in so doing by the Presbytery concerned, apart from those delegated to the Judicial Commission in accordance with section 4(3) below or to the Ministries Appeal Panel in accordance with Act VI 2007; and
- (iv) all other appeals except for those mentioned in sub-sections (i), (ii) and (iii) above.
- (v) For the avoidance of any doubt, the Appeals Committee of the Commission of Assembly shall not hear any appeal in a Personal Case.

(3) The Judicial Commission shall hear the following cases:

- (i) Appeals under the Discipline of Ministry Act (Act III 2001), being appeals against the decisions of Presbyterial Commissions in cases relating to discipline of Ministers, Licentiate, Graduate Candidates & Deacons, except in matters of doctrine;
- (ii) Appeals in all cases arising under the Congregations in an Unsatisfactory State Act (Act I 1988);

- (iii) Appeals in all cases arising under 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); and
- (iv) Appeals in Personal Cases.
- (v) For the avoidance of doubt, the Judicial Commission shall not hear appeals to the Ministries Appeal Panel in accordance with Act VI 2007.

(4) If there is (i) any uncertainty or dispute as to which Commission shall hear a case or appeal, or (ii) any dispute as to whether a case or appeal to be heard before the Commission of Assembly is one which should be referred to its Appeals Committee or to the full Commission of Assembly, the Principal Clerk shall refer the matter to the Jurisdiction Committee and that Committee shall decide, in alternative (i), by which Commission the case or appeal shall be heard, and in alternative (ii), whether the case or appeal should be referred to the Appeals Committee or to the full Commission of Assembly, its decision in all such matters being final.

(5) Save for the provisions of this section, nothing in this Act affects the terms of the Ministries Appeal Panel Act (Act VI, 2007).

(6) All cases in which an appeal was intimated to and received by the Principal Clerk prior to the date of this Act coming into force shall continue to be dealt with in accordance with the terms of the Commission of Assembly Act (Act VI 1997) or the Judicial Commission Act (Act II 1988), as appropriate.

(7) Decisions of the Appeals Committee of the Commission of Assembly and of the Judicial Commission shall be final and there shall be no appeal from a decision of either the Appeals Committee of the Commission of Assembly or the Judicial Commission.

## **5. Reference to General Assembly**

It is declared that the General Assembly themselves shall not hear or dispose of any appeals save for appeals in matters of doctrine as referred to in section 4(3)(i) nor shall the decisions of the Appeals Committee of the Commission of Assembly or the Judicial Commission be subject to review by the General Assembly; provided that any case or appeal in which, in the opinion of the relevant Commission, an important issue of principle is at stake may be referred by that Commission to the General Assembly.

## **6. Rules of Procedure**

All appeals intimated under this Act shall follow the rules of procedure set out in Schedule 2.

## **PART 2: THE COMMISSION OF ASSEMBLY AND THE APPEALS COMMITTEE OF THE COMMISSION OF ASSEMBLY**

### **7. Appointment of Commissioners for the Commission of Assembly**

(1) At their closing session each year, the General Assembly shall appoint Commissioners for the Commission of Assembly comprising the following persons:

(i) one tenth of the ministers and elders commissioned by Presbyteries to the General Assembly in that year, such Commissioners to be designated by the appointing Presbyteries in accordance with the rules set out in Schedule 1 to this Act; and

(ii) one in ten or part of ten of the members of the Diaconate commissioned by Presbyteries to the General Assembly in that year, such members to be selected at random by the Clerks of Assembly.

(2) From the Commissioners appointed to the Commission of Assembly there shall be selected the members to serve on the Appeals Committee of the Commission of Assembly, in terms of section 8 below.

(3) Act VI 1997 shall from the date of this Act be amended so that the Commissioners appointed to the Commission of Assembly shall be appointed in accordance with the provisions of this section 7 and Schedule 1 to this Act.

#### **8. Constitution of the Appeals Committee of the Commission of Assembly**

(1) Throughout the year following each General Assembly, in order that cases or appeals falling within its jurisdiction may be heard, an Appeals Committee of the Commission of Assembly shall be constituted as required. Whenever a sitting of the Appeals Committee of the Commission of Assembly is required, the Clerks of Assembly shall select the following persons from the Commissioners appointed in accordance with section 7, to be members of that Appeals Committee:

- (i) Subject to the provisions of section 23(1), ten ministers, ten elders and one deacon, all selected at random from the Commissioners appointed to the Commission of Assembly; and
- (ii) A Convener and a Vice-Convener, from those appointed under section 9 below.

(2) In addition, the following members *ex officio*s of the General Assembly in that year, shall hold the same offices in the Appeals Committee of the Commission of Assembly as they did in the General Assembly: the Clerks of Assembly, the Procurator and the Law Agent.

#### **9. Convener and Vice-Convener of the Appeals Committee of the Commission of Assembly**

(1) The General Assembly, on the nomination of the Nomination Committee, and in accordance with the Standing Orders of the General Assembly, shall appoint a Convener and a Vice-Convener of the Appeals Committee of the Commission of Assembly and an alternate Convener and Vice-Convener, all of whom shall be qualified to practise as lawyers or shall be persons experienced in the law and practice of the Church.

(2) Subject to section 9(3) below, each sitting of the Appeals Committee of the Commission of Assembly shall be moderated by either a Convener or a Vice-Convener so appointed.

(3) In the event that (i) neither the Convener nor the Vice-Convener nor their alternates is able to attend a sitting of the Appeals Committee of the Commission of Assembly, or (ii) both the Convener and Vice-Convener disqualify themselves from the hearing of a particular appeal, the Appeals Committee of the Commission of Assembly may choose their own convener from their own number to moderate that sitting (or the hearing of a particular appeal within that sitting, as the case may be), provided always that the same person shall continue to act as convener throughout the hearing of any given appeal. Any such person chosen to act as convener shall either be a person qualified to practise as a lawyer or shall be a person experienced in the law and practice of the Church.

(4) The person who moderates a sitting (or hearing) of the Appeals Committee of the Commission of Assembly shall have a casting vote.

#### **10. Quorum**

The quorum of the Appeals Committee of the Commission of Assembly shall be fifteen persons.

#### **11. Sittings**

Sittings of the Appeals Committee of the Commission of Assembly shall be arranged as follows:

- (a) Sittings shall take place as required, during the months of June, August, October, December, February and April.
- (b) Sittings shall be called by the Principal Clerk.

**12. Report to the General Assembly**

The Minutes of all sittings of the Appeals Committee of the Commission of Assembly shall be submitted to the General Assembly in the Volume of Reports, or in the Order of Proceedings, or in the Daily Papers, and laid on the table, without discussion, provided that the General Assembly may consider and deal with any allegation that the Appeals Committee of the Commission of Assembly has acted in excess of the powers conferred by this Act.

**13. Relation to Legislation**

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

(2) The Appeals Committee of the Commission of Assembly shall not have power to review any decision of the General Assembly, except for a decision made under the Appraisal and Adjustment Act (Act VII 2003) where the Appeals Committee of the Commission of Assembly is satisfied that the relevant circumstances have significantly changed.

(3) The Appeals Committee of the Commission of Assembly shall be accountable to the General Assembly, which may quash any decision made by the Appeals Committee of the Commission of Assembly which exceeds the powers conferred by this Act.

**PART 3: THE JUDICIAL COMMISSION**

**14. Appointment of a pool of Persons for Sittings of the Judicial Commission**

(1) There shall be a pool of persons, from which there shall be drawn the members to serve on the Judicial Commission.

(2) The pool shall be twenty-five people comprising ministers, elders and deacons nominated by the Nomination Committee and appointed by the General Assembly.

(3) The persons in the pool to serve on the Judicial Commission shall not remain in the pool for more than four years, and no person who has formerly been in the pool, shall be eligible for reappointment until after the lapse of one year, except upon special cause shown.

(4) In the event of a person in the pool to serve on the Judicial Commission who is due to retire being then engaged in the hearing of an appeal, he or she shall continue in office, but only until the Judicial Commission has recorded its decision in the appeal in question.

(5) The Procurator of the Church shall not be eligible for inclusion in the pool for the Judicial Commission but may be requested to attend a sitting of the Judicial Commission if it is so determined at the Appeal Management Hearing referred to in Schedule 2.

**15. Constitution of the Judicial Commission**

Whenever a sitting of the Judicial Commission is required, the Clerks of Assembly shall select the following persons:

- (i) Subject to the provisions of section 23(1), thirteen persons, seven of whom shall be ministers or deacons and six of whom shall be elders, all selected at random from the pool; and

- (ii) A Convener and a Vice-Convener, from those appointed under section 16 below.

**16. Conveners & Vice-Conveners of the Judicial Commission**

(1) The General Assembly, on the nomination of the Nomination Committee, and in accordance with the Standing Orders of the General Assembly, shall appoint two persons to be Conveners and two persons to be Vice-Conveners of the Judicial Commission, all of whom shall be qualified to practise as lawyers or shall be persons experienced in the law and practice of the Church.

(2) Subject to section 16(3) below, each sitting of the Judicial Commission shall be chaired by either a Convener or a Vice-Convener so appointed.

(3) In the event that (i) none of the Conveners or Vice-Conveners is able to attend a sitting of the Judicial Commission, or (ii) both the Convener and Vice-Convener disqualify themselves from the hearing of a particular appeal, the Judicial Commission may choose their own convener from their own number to chair that sitting (or the hearing of a particular appeal within that sitting, as the case may be), provided always that the same person shall continue to act as convener throughout the hearing of any given appeal. Any such person chosen to act as convener shall either be a person qualified to practise as a lawyer or shall be a person experienced in the law and practice of the Church.

(4) The person who chairs a sitting (or hearing) of the Judicial Commission shall have a casting vote.

**17. Quorum**

The quorum of the Judicial Commission shall be ten persons.

**18. Sittings**

Sittings of the Judicial Commission shall be arranged as follows:

- (a) Sittings shall take place as required, during the months of June, August, October, December, February and April.
- (b) Sittings shall be called by the Principal Clerk.

**19. Report to the General Assembly**

A Minute of proceedings of the Judicial Commission shall be incorporated in a written report to the General Assembly, but shall not be subject to review by the General Assembly.

**20. Relation to Legislation**

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

**PART 4: PROVISIONS APPLICABLE TO BOTH COMMISSIONS**

**21. Clerks**

(1) The Clerks of Assembly shall act as Clerks to the Commissions, but the duties may be carried out by one of them.

(2) If neither of them is present at a sitting, the Commission shall appoint a substitute, whether or not a member of that sitting of the Commission, to act as Clerk of the Commission during that sitting, and the oath *de fideli* shall be administered to him or her and recorded.

**22. Priority of meetings**

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

(2) Decisions of the Commissions shall be complied with as if they were decisions of the General Assembly.

### **23. Other provisions as to membership of Commissions**

(1) No member of any Court whose decision is under appeal, nor any person who has taken part in the cause at any stage, nor any person with an interest in the outcome of the cause, shall act as a member of a Commission when an appeal in such a cause is being heard.

(2) No member of a Commission who has not been present during the whole proceedings in the appeal shall vote or take any part in the decision of the Commission in question or be consulted for the purposes of production of written reasons for the decision.

## **PART 5: GENERAL**

### **24. Intimation of decisions**

Save where a decision is of an administrative non-controversial nature and was made without a vote requiring to be taken, intimation of all decisions of courts of the Church in relation to which there is a right to appeal shall be made to all parties having a legitimate interest with regard to the decision by sending to them forthwith (1) a copy of the decision (2) an extract minute in respect of the decision and (3) a copy of the section or sections of the relevant legislation in terms of which an appeal may be intimated.

### **25. Amendments**

The Discipline of Ministry Act (Act III 2001) is amended as follows:

*Delete sections 19 (1) to (6) and substitute the following as section 19(1); also consequentially renumber section 19 (7) as section 19 (2):*

“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 2013. 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 2013.”

### **26. Repeal and Amendment**

(1) The Judicial Commission Act (Act II 1988) is hereby repealed but where an appeal in a case to be heard by the Judicial Commission was intimated to and received by the Principal Clerk before the date of this Act, such proceedings shall continue until final disposal in accordance with the law in force immediately before the date of this Act.

(2) The Commission of Assembly Act (Act VI 1997) is from the date of this Act to be interpreted so as to apply only to matters brought to it not comprising cases or

appeals, all cases and appeals falling within its jurisdiction being from the date of this Act heard by the Appeals Committee of the Commission of Assembly and governed by the terms of this Act. Where an appeal in a case to be heard by the Appeals Committee of the Commission of Assembly was intimated to and received by the Principal Clerk before the date of this Act, such proceedings shall continue until final disposal in accordance with the law in force immediately before the date of this Act.

## **SCHEDULE 1**

### **Rules for Presbyteries appointing Commissioners to the Commission of Assembly**

1. To ascertain the number of appointees for each Presbytery, the number of ministers and elders commissioned to the General Assembly shall be divided by ten and taken up or down to the nearest whole number, provided that every Presbytery shall appoint at least one minister and one elder.
2. When the formula produces an even number, the Presbytery shall appoint ministers and elders in equal numbers.
3. When the formula produces an odd number:
  - (a) in odd years (i.e. 2013, 2015 etc) Presbyteries with odd numbers (ie Presbyteries 1, 3, etc) shall appoint a number of ministers exceeding the number of elders by one and Presbyteries with even numbers shall appoint a number of elders exceeding the number of ministers by one; and
  - (b) in even years (i.e. 2014, 2016 etc) Presbyteries with even numbers shall appoint a number of ministers exceeding the number of elders by one, and Presbyteries with odd numbers shall appoint a number of elders exceeding the number of ministers by one.

## **SCHEDULE 2**

### **Rules of Procedure**

#### **1. Intimation of Appeal**

- 1.1 The Appellant shall intimate the appeal to both the clerk of the Court against whose decision the appeal is being taken and to the Principal Clerk.
- 1.2 The Principal Clerk shall forthwith notify (i) the other person or persons involved in the appeal (“the Respondent”) of the fact that an appeal has been intimated and (ii) both the Appellant and the Respondent of the date by which Grounds of Appeal (as specified in Rule 2 below) must be lodged.

#### **2. Lodging of Grounds of Appeal by Appellant**

- 2.1 Within four weeks of the date upon which the appeal was intimated in terms of Rule 1 above, the Appellant shall lodge Grounds of Appeal with the Principal Clerk, and intimate a copy of those Grounds to (i) the Clerk of the Court or the Secretary of the Presbyterian Commission, as the case may be, against whose decision the appeal is being taken, and (ii) the Respondent in the Appeal.
- 2.2 The Grounds of Appeal shall consist of brief specific numbered propositions stating the grounds on which it is argued that the appeal should be allowed, and identifying for each ground the relevant subsection of section 2(3) of this Act.

#### **3. Lodging of Grounds of Appeal by Respondent**

- 3.1 A Respondent who wishes a review of any part of the decision may also, within four weeks of the date upon which the appeal was intimated in terms of Rule 1, lodge with the Principal Clerk Grounds of Appeal against any part of the decision which has been appealed, those Grounds also to comply with the requirements of Rule 2.2 above.
- 3.2 The Respondent shall forthwith send a copy of any such Grounds of Appeal to the Appellant and intimate a copy of those Grounds to the Clerk of the Court or the Secretary of the Presbyterian Commission, as the case may be, against whose decision the appeal is being taken.

#### **4. Documents from previous proceedings**

- 4.1 The Clerk of the Court or the Secretary of the Presbyterian Commission, as the case may be, against whose decision is being taken shall transmit to the Principal Clerk all documents relative to the proceedings being appealed against as shall be required for the hearing of the appeal.

#### **5. Appeal Management Hearings**

- 5.1 In any appeal, once the Appellant’s Grounds of Appeal have been lodged, and save where the Convener and the Vice-Convener with the agreement of the Parties decide to dispense with an Appeal Management Hearing, the Principal Clerk shall fix a date for an Appeal Management Hearing.
- 5.2 The date of the Appeal Management Hearing shall be at least 28 days after the date upon which the Appellant’s Grounds of Appeal were lodged. The Principal Clerk shall intimate the date of the Appeal Management Hearing to both Parties, giving at least 14 days’ prior written notice of the date.

- 5.3 At least seven days before the date of the Appeal Management Hearing, the Respondent shall lodge its written response to the Grounds of Appeal (and in the event that the Respondent has lodged any Grounds of Appeal in terms of Rule 3, the Appellant shall lodge its written response to such Grounds of Appeal within the same timescale).
- 5.4 The purpose of the Appeal Management Hearing shall be to determine whether the Parties are ready to proceed to a hearing of the appeal, and to consider other procedural and practical matters in respect of the appeal.
- 5.5 The Appeal Management Hearing shall be conducted by the Convener and the Vice-Convener of the Commission which is to hear the appeal. The Clerks of Assembly shall act as clerks to the Appeal Management Hearing.
- 5.6 An Appeal Management Hearing shall consider the following matters:
- a) the Parties' state of preparation for the Appeal Hearing;
  - b) setting of a date and duration for the Appeal Hearing;
  - c) productions required, with the presumption that the productions at the Appeal Hearing shall be those which were before the Court against whose decision the appeal is being taken, unless a Party is allowed to lodge additional material on cause shown;
  - d) whether the Parties may agree certain productions and evidence, and whether a Joint Minute agreeing any facts may be lodged;
  - e) whether the timetable for the lodging of the Written Arguments (as defined below) is apt, or requires to be varied in any way, for example to provide that Parties will exchange drafts of their Written Arguments by a certain date;
  - f) whether or not the Appeal Hearing should be held in private;
  - g) whether or not a factual investigation of any points is necessary or appropriate, in which case a committee or reporter may be appointed by the Principal Clerk for this purpose;
  - h) whether there should be evidence led at the Appeal Hearing, the presumption being that this will not occur;
  - i) whether the Procurator should attend the Appeal Hearing;
  - j) whether any Party has any objection to any person in the pool for the Commission sitting when the appeal is being heard, which objection may only be made on cause shown and, if sustained, shall disqualify the person or persons objected to from sitting in that appeal;
  - k) whether either Party wishes to raise any issue of competency or relevancy which might require to be discussed at the outset of the Appeal Hearing; and
  - l) any other matter concerning the Appeal Hearing, the decision of the Convener and the Vice-Convener as to what should be considered being final.
- 5.7 The Parties or their representatives shall wherever possible attend the Appeal Management Hearing in person, provided that if the Convener and the Vice-Convener so agree, the Appeal Management Hearing may take place by conference call or other appropriate medium.
- 5.8 At the Appeal Management Hearing the Convener and the Vice-Convener shall have power to make any order or determination which is just and reasonable and/or which they think appropriate to secure the expeditious disposal of the appeal, which order or determination shall be final. Such order or determination may include in the interests of justice a continuation to

a continued Appeal Management Hearing (and this on one or more occasions).

- 5.9 Where an appeal is against a Presbytery's decision in terms of section 6(1) or section 14(1) of the Appraisal and Adjustment Act (Act VII 2003), the Principal Clerk shall intimate the date of the Appeal Management Hearing to the Assembly's Committee. The Assembly's Committee shall attend the Appeal Management Hearing as an interested party, and may speak, if so desired.

## **6. Date of Appeal Hearing**

- 6.1 If the date of the Appeal Hearing has not been fixed at an Appeal Management Hearing, the Principal Clerk shall give to the Parties at least 42 days' notice (or such shorter period as may be agreed by the Parties) of the date fixed for the Appeal Hearing.
- 6.2 The Principal Clerk shall also give notice of the date fixed for the Appeal Hearing to the members of the Commission for that Appeal Hearing, along with copies of all appropriate papers.

## **7. Written Arguments prior to Appeal Hearing**

- 7.1 At least 14 days prior to the date of the Appeal Hearing, both the Appellant and the Respondent(s) shall lodge with the Principal Clerk and intimate to the other Party a document comprising their written argument for the purposes of the appeal ("Written Argument").
- 7.2 The Written Argument submitted by the Appellant is to be an expansion of the Grounds of Appeal already submitted and is to set out for each ground of appeal, a succinct and articulate statement of the facts founded upon and the propositions of law being advanced.
- 7.3 The Written Argument submitted by the Respondent shall set out the basis upon which the Respondent is challenging the appeal. It shall set out, in respect of the challenge to each ground of appeal, a succinct and articulate statement of the facts founded upon and the propositions of law being advanced.
- 7.4 Each Written Argument shall also (i) specify what disposal of the matter is sought by that Party, and (ii) be signed by or on behalf of the Party submitting it.
- 7.5 Each Written Argument when lodged shall be accompanied by (i) all documents referred to or founded upon in the Written Argument, (ii) subject always to any order or determination made at the Appeal Management Hearing in terms of Rule 5.6 c) above, all productions, or copies thereof, referred to or founded upon in the Written Argument, and (iii) all legal authorities, or copies thereof, listed in the Written Argument.
- 7.6 Each Party shall, when lodging its Written Argument and accompanying papers, send copies to the other Party.
- 7.7 No new grounds of appeal may be raised either in Written Argument or at the Appeal Hearing itself, save that on application to the Convener and the Vice-Convener at the Appeal Hearing itself, the Convener and the Vice-Convener shall have sole discretion to allow consideration of any additional grounds of appeal on cause shown.

## **8. Appeal Hearings**

- 8.1 At the Appeal Hearing the following shall apply:
- a. Each Written Argument and supporting documents shall constitute the principal submissions of each Party;
  - b. Unless it otherwise directs, the Commission will expect each Party to rely upon its Written Argument without reading it over to the Commission;
  - c. Each Party may, subject to control of the Convener, Vice-Convener or acting convener of the Commission, make comment supplementary to the Written Argument;
  - d. Each Party may respond to any Written Argument lodged by the other Party; and
  - e. Each Party shall answer any points raised by any member of the Commission.
- 8.2 The rules of civil evidence in Scots law shall apply and the standard of proof in any examination of evidence shall be the balance of probabilities. Any witnesses who are called shall be required by the Convener, Vice-Convener or acting convener to take the oath or affirm before giving evidence.

## **9. Timing at Appeal Hearings**

- 9.1 The Appellant and the Respondent have a duty to co-operate with each other and with the Commission to ensure the completion of the Appeal Hearing within the time allocated by the Commission.
- 9.2 The Commission may, at any point during the Appeal Hearing, set a timetable for completion by a Party of any submissions permitted in terms of Rule 8.1 above.

## **10. New information at Appeal Hearings**

- 10.1 On cause shown, the Commission may permit either Party to introduce at the Appeal Hearing new information that has come to light in the period since their Written Argument was lodged.
- 10.2 Where the Commission permits the introduction of new information, it may at its discretion permit the lodging of new documents in support of the new information.
- 10.3 A Party who wishes to introduce new information and lodge additional documents shall send a copy of the information and documents to the Principal Clerk and to the other Party as soon as the documents and information come into that Party's possession.
- 10.4 A Party who has sent new information and documents to the Principal Clerk shall apply at the Appeal Hearing to allow it to be introduced or lodged, as the case may be.

## **11. Miscellaneous provisions as to running of Appeal Hearings**

- 11.1 An Appeal Hearing shall proceed from day to day until concluded, provided always that it shall be in the power of the Commission, if in its opinion the justice of the case demands it, or for any other reason which may appear to be sufficient, to adjourn the Appeal Hearing either on its own motion, or at the

request of either Party on cause shown, and subject to such conditions as it may think proper to impose.

- 11.2 The Commission may decide at any stage of the Appeal Hearing that all or part of the proceedings shall be taken in private, provided that if a decision on this matter was taken at the Appeal Management Hearing, a different decision shall be reached at the Appeal Hearing only on cause shown.
- 11.3 In appeals where it was deemed necessary at the Appeal Management Hearing to hear evidence, witnesses shall be cited in ordinary form by the Clerk of the Commission to appear at the Appeal Hearing. Such witnesses shall be examined on oath or affirmation, as the Commission shall direct, by the Party calling them. Thereafter the witness may be cross-examined by the other Party and the Party calling the witness may thereafter re-examine the witness on any new matter brought out in cross-examination. On the conclusion of the Parties' examination of a witness, any member of the Commission may put questions to the witness on his or her own behalf, or on the suggestion of either Party.
- 11.4 Where an appeal is against a Presbytery's decision in terms of section 6(1) or section 14(1) of the Appraisal and Adjustment Act (Act VII 2003), the Principal Clerk shall intimate the date of the Appeal Hearing to the Assembly's Committee. The Assembly's Committee shall attend the Appeal Hearing as an interested party and may speak, if so desired.

## **12. Recording of Appeal Hearings**

- 12.1 All Appeal Hearings (including for the avoidance of any doubt, the evidence of any witnesses called to appear) shall be audio recorded and the recordings retained by the Clerks of Assembly for at least ten years.

## **13. Decision of the Commission**

- 13.1 Upon completion of all submissions by both Appellant and Respondent, and once all supplementary comment has been made, responses given, answers stated, and evidence led (if any), the Commission shall retire to consider its decision.
- 13.2 Upon conclusion of the Commission's deliberations, the decision of the Commission shall be committed to writing, read over to the Commission, and signed by the Convener, Vice-Convener or acting convener. The Convener, Vice-Convener or acting convener shall then read over the decision of the Commission in the presence of both Parties. Also in the presence of the Parties, the Convener, Vice-Convener or acting convener shall give a brief oral summary of the main reasons for that decision and shall confirm whether the decision was taken unanimously or by majority vote.
- 13.3 Any decision of the Commission may include instructions issued to a Court or to the Parties.
- 13.4 Within fourteen days after the end of an Appeal Hearing, the Convener, Vice-Convener or acting convener of the Commission, in consultation through the Principal Clerk with all Commissioners present throughout the Appeal Hearing, shall produce written reasons for the decision of the Commission. The Principal Clerk shall within twenty one days of the end of the Appeal Hearing send a copy of the written reasons to the Parties.

13.5 The written reasons for the decision of the Commission shall be held by the Principal Clerk who upon request shall make them available for public inspection.

#### **14. No further appeal**

14.1 The decision of the Commission and any instructions issued by the Commission shall be final and binding on the Parties and no further appeal shall be available.

#### **15. Dispensing etc powers of the Commission**

15.1 On application to it during an Appeal Hearing, the Commission may relieve a Party from the consequences of failure to comply with the provisions of this Act shown to be due to mistake, oversight or some other excusable cause and that on such conditions as the Commission thinks fit.

15.2 On application to it during an Appeal Hearing, the Commission may also allow a Party to amend its grounds of appeal or Written Argument where the need for amendment is shown to be due to mistake, oversight or some other excusable cause and that on such conditions as the Commission thinks fit.

15.3 At any time during the appeal process, the Commission may determine, either on its own motion or following motion of a Party, that it would be in the interests of the justice for the appeal proceedings to be sisted, whether to allow for mediation or otherwise.

#### **16. Expenses**

16.1 Subject to the provisions of the Discipline of Ministry Act (Act III 2001) as to expenses, the Parties at their own cost may employ Counsel or Solicitors to act on their behalf, or may conduct their case themselves or delegate one of their number to do so.

16.2 A Presbytery whose decision is appealed against shall be entitled, if it so desires, to have the assistance of an Assessor or Assessors appointed by the Legal Questions Committee.

16.3 The expenses of the Commission members and of the proceedings of the Commission shall be defrayed out of the General Purposes Fund of the Church unless and until the General Assembly shall determine otherwise.

#### **17. Intimations/sending of information**

17.1 Where any document or other information requires to be intimated or sent to any person, that intimation or sending may take place by email.