

# LEGAL QUESTIONS COMMITTEE

## May 2014

### PROPOSED DELIVERANCE

#### The General Assembly:

1. Receive the Report.
2. Instruct the Committee in consultation with the Ministries Council to continue the review of Ministerial Practising Certificates with a view to bringing a report to a future General Assembly.
3. Approve the Ministers and Deacons in Civil Partnerships Overture as set out in Appendix B and transmit the same to Presbyteries under the Barrier Act, directing that returns be sent to the Principal Clerk by 31 December 2014 (section 3 and Appendix B).
4. In line with the decisions made in principle at the General Assembly of 2013, in the event of the General Assembly agreeing to transmit to Presbyteries the Ministers and Deacons in Civil Partnerships Overture or any other related Overture, agree to:
  - (i) instruct the Principal Clerk, the Procurator and the Solicitor of the Church to prepare a Legal Advisory Note explaining the implications of approval or disapproval of the Overture, such Note to accompany the Overture in the "Remits to Presbyteries";
  - (ii) instruct that a ballot paper be produced to accompany the Overture in the "Remits to Presbyteries" and further instruct every Presbytery to establish their response to the Overture by a vote using such a ballot paper.
5.
  - (i) Instruct all Courts, Councils and Committees of the Church not to make decisions in relation to contentious matters of same sex relationships, accept for training, allow to transfer from another denomination, ordain or induct any person in a same sex relationship until the position in relation to the proposed or any other related Overture has been finally determined by a future General Assembly.
  - (ii) Notwithstanding the foregoing, allow the induction into pastoral charges of ministers and deacons ordained before 31st May 2009 who are in a same sex relationship.
  - (iii) During the moratorium set out in section 5(i) above, instruct all Courts, Councils and Committees of the Church not to issue press statements or otherwise talk to the media in relation to contentious matters of human sexuality.
6. Pass an Act amending the Discipline of Ministry Act (Act III 2001) as set out in Appendix C (section 4 and Appendix C).
7. Pass an Act amending the Protection against Bullying Act (Act IV 2007) as set out in Appendix D (section 4 and Appendix D).
8. Pass an Act amending the Protection against Discrimination Act (Act V 2007) as set out in Appendix E (section 4 and Appendix E).
9. Pass an Act amending the Discipline of Elders, Readers and Office Bearers Act (Act I 2010) as set out in Appendix F (section 4 and Appendix F).
10. Instruct the Committee to review the Acts of the General Assembly dealing with matters of Discipline, Bullying and Discrimination with a view to bringing forward one consolidating and cohering Act to a future General Assembly (section 4.7).
11. Approve the Complaints Procedure as set out in Appendix G (section 5 and Appendix G).
12. Pass the Alternative Dispute Resolution Processes Act as set out in Appendix H (section 6 and Appendix H).

13. Amend Standing Order 93(i) as set out in the Report (section 7).
14. Note the terms of the report on the Keeping of Records in Digital Formats (section 9) and confirm that the traditional form of written record keeping for such important documents as membership records and minutes of courts and Councils should be maintained.
15. Instruct the Council of Assembly to consider whether a national records management policy should be developed, what shape that policy might take and whether such a policy should be enshrined in the law of the Church.

## REPORT

### 1. Elders as Moderators of Kirk Sessions

1.1 At the General Assembly of 2013, in the report of the Mission and Discipleship Council, the Committee received a remit in the following terms:

*“Instruct the Legal Questions Committee to consider the implications of the survey regarding the use of Elders as Moderators, and bring forward recommendations on this issue to a future General Assembly.”*

1.2 The survey reveals some issues and some confusions for the Church to consider. There are issues about the circumstances in which Elders are used as Moderators, and confusions between this role and that of Interim Moderator of a Charge.

1.3 The Committee has begun a conversation with the Mission and Discipleship Council about this matter, recognising that the Ministries Council will also need to provide input, in order that suitable proposals may be brought to a future Assembly.

### 2. Review of the provisions of the Ministry Act (Act II 2000) as to Ministerial Practising Certificates

2.1 At the General Assembly of 2013 the Committee received a remit as follows:

*“Instruct the Committee in consultation with the Ministries Council to conduct a comprehensive review of the provisions of Act II 2000 as to ministerial practising certificates with a view to bringing a report and amending legislation to the General Assembly of 2014.”*

2.2 The Committee established a sub-committee to take matters forward in consultation with representatives from the Ministries Council.

2.3 It soon became clear that the discussion of Practising Certificates raised questions about other legislation, for example the Vacancy Procedure Act (Act VIII 2003) and the Church Courts Act (Act III 2000). The sub-committee was also made aware that the Special Commission anent Ministerial Tenure was committed to bringing forward a process which might give the Church a Capability Procedure for ministers. The Commission was also preparing a report on a new approach to ministerial tenure which could impact on the question of office holding.

2.4 In the circumstances the Committee asks the General Assembly to extend the timetable for a review of Practising Certificates on the understanding that the Committee may wish to tackle any review through a wider reconsideration of legislation relating to the Ministry of Word and Sacrament.

### 3. Ministers and Deacons in Civil Partnerships Overture

#### 3.1 Introduction

The 2013 General Assembly affirmed “the Church’s historic and current doctrine and practice in relation to human sexuality” while, at the same time, permitting “those Kirk Sessions who wish to depart from that doctrine and practice to do so.” The 2013 Assembly then instructed the Committee to bring an Overture to the 2014 Assembly which, if passed under Barrier Act procedure, would enact a set of principles (“the 2013 Principles”) which were listed in the deliverance (Appendix A).

The Committee brings an Overture to the Assembly as instructed (Appendix B).

### 3.2 The Committee

Our membership is drawn from across the breadth of the Church. Diverse in our understandings of God's will for the Church, we each place our professional skills and our experience of the Church at its service. At each stage of drafting the Overture, healthy debate complemented careful drafting. We proceeded prayerfully and in the knowledge that this is a matter of profound importance which is causing hurt and anxiety to many.

### 3.3 The Drafting Process

3.3.1 Drafting of the Overture took place over three phases:

- preparation of a draft Overture for consultation
- a Church-wide consultation
- consideration of the consultation responses and finalising of the Overture

3.3.2 We are grateful to all those who responded to our invitation to comment on the draft Overture. All of the points raised were considered by us and a number of changes made.

3.3.3 Throughout the drafting process, our primary considerations were to:

- to honour the decision of the 2013 Assembly in respect of the Church's doctrine and practice
- to fulfill the instruction of the 2013 Assembly and bring an Overture which would enact the 2013 Principles

3.3.4 We also had regard to:

- the peace and unity of the Church
- existing Church law
- if, and how best, the 2013 Principles could work
- relevant European, UK and Scots law

### 3.4 The Basis of the Overture

3.4.1 The 2013 Assembly voted in favour of a 'mixed economy' in relation to the ordination, induction and appointment of ministers and deacons in civil partnerships.

Unless the Church decides it has no opinion on this issue and is content to allow individuals, congregations, presbyteries and successive Assemblies to do what they want, then it must offer both theological guidance and practical instructions. Any mixed economy must allow for differences of belief and practice.

3.4.2 The 2013 Assembly was asked to decide between two different forms of mixed economy. Both required the Church to state a primary or default theological position while permitting difference from that position both in opinion and in action.

3.4.3 The first option was to depart from the historic and current doctrine and practice of the Church and to establish the primary or default position as being that civil partnership was not a barrier to holding office or appointment as a minister or deacon. This new primary position could only be departed from if a Kirk Session resolved in advance to impose a requirement that a congregational vacancy or an appointment must not be filled by a person in a civil partnership.

3.4.4 The 2013 Assembly chose the second option as outlined in section 3.1 and Appendix A. It chose not to depart from, but rather to affirm, the historic and current doctrine and practice of the Church. This remained the primary or default theological position from which difference would be permitted both in opinion and in action. Inherent in the 2013 Assembly's decision is a recognition that the issue of human sexuality is a matter in which liberty of opinion is permitted since it does not enter into the substance of the Faith.<sup>1</sup> The Assembly wished that liberty of opinion to be translated into a liberty of practice for Kirk Sessions, albeit a liberty to be exercised in clearly defined circumstances. Therefore, when faced with a congregational vacancy or a possible appointment, a Kirk Session may decide that its congregation will depart from the practice of the Church and may call or appoint a minister or deacon who is in a civil partnership.

<sup>1</sup> Article Declaratory V

### **3.5 Ministers and deacons in civil partnerships**

**3.5.1** The Overture focuses only on those congregational offices or jobs about which Kirk Sessions have a say and which might be held by ministers and deacons. The Overture sets out the circumstances in which a minister or deacon in a civil partnership might hold office or employment with or within the life of a congregation. It does not apply to any other person in a civil partnership. This was as far as the 2013 Assembly's instruction went.

**3.5.2** A person who is in a civil partnership will be eligible for selection and training as a minister or deacon. Once ordained, a minister or a deacon in a civil partnership has all the rights and responsibilities of a minister with one limitation. He or she may not be called or appointed to a charge which has not departed.

**3.5.3** A person who is in a civil partnership may only be ordained as minister of a charge if the Kirk Session has decided that its congregation will depart in respect of that vacancy. A person who is in a civil partnership may only be ordained as associate or assistant minister of a charge if the Kirk Session has decided that its congregation will depart in respect of that appointment. A person may only be ordained as an ordained local minister where there is an agreed designated appointment to a congregation the Kirk Session of which has decided to depart in respect of that appointment. Once ordained a minister will be eligible to be inducted or appointed to any other charge which has decided to depart for the purpose of the vacancy or appointment.

**3.5.4** A deacon who is in a civil partnership may be ordained without restriction. He or she may only be appointed to a congregation, the Kirk Session of which has decided to depart for the purposes of the appointment.

**3.5.5** If a minister enters into a civil partnership subsequent to induction or appointment, he or she may continue in post if the Kirk Session had already decided to depart for the purposes of his or her induction or appointment or if the Kirk Session subsequently decides to depart. Similar provisions apply to appointments of

deacons. If however the Kirk Session subsequently decides not to depart, then the pastoral tie shall be dissolved or appointment terminated. In the case of dissolution of a pastoral tie, provision shall be made for the minister in the same way as provided in section 9 of the Congregations in Changed Circumstances Act (Act VI 1984).

### **3.6 Peace and Unity of the Church**

**3.6.1** As far as possible, the Overture offers certainty and simplicity. Space for ongoing debate is protected. Flash-points for future conflict are kept to a minimum.

**3.6.2** Spiritual responsibility for a congregation is vested primarily in its Kirk Session. Therefore, it is right that Kirk Sessions have power to decide whether their congregation will depart from the practice of the Church. Restated in the Overture is the particular duty to take account of the peace and unity and pastoral needs of the congregation and of any parish or other grouping of which it is part.

**3.6.3** Departure from the practice of the Church is a significant step. We believe that it is right for the Church to insist upon a measured process which allows time for communication, consultation and consensus building. A Kirk Session cannot make a once and for all decision and will have to revisit its decision to depart or not in future vacancies and at the time of further congregational appointments of ministers and deacons. It is important that such a decision is made early so all those involved, especially the applicant, can proceed with certainty. Furthermore, this process reduces the risk of theological views about human sexuality supplanting other relevant considerations such as personal gifts, skills or experience.

**3.6.4** Superintendence of a congregation lies with the Presbytery. If a Kirk Session has decided to depart, no Presbytery has power to refuse to sustain a congregation's call to the minister of its choice simply because that minister is in a civil partnership. A Presbytery's existing right to refuse to sustain a call on other grounds is not curtailed, for example if there is substantial opposition to the call.

**3.6.5** Ordination and induction of ministers lies with presbyteries. The ordination or induction of a minister or a deacon in a civil partnership may be cause for celebration for some. Conversely, these may be moments of particular theological anguish for presbyters who do not agree with departure from the Church's doctrine and practice. Therefore, such presbyters need not participate in services of ordination and induction. Nor need they act as interim moderator of a congregation which has decided to depart in the past or during the immediate vacancy. However, the disagreement of some presbyters will not prevent the induction or ordination of a minister or deacon in a civil partnership going ahead. Presbyteries are enjoined to take account of differences of opinion among its members and congregations when conducting their business and fulfilling their duties and responsibilities and at all times to have regard to the peace and unity of the Church.

### 3.7 The Equality Act 2010<sup>2</sup>

**3.7.1** The Church's consideration of these issues is taking place against the background of changes which have occurred in the civil law since 2000. In implementation of a European Union Directive (2000/78), the UK introduced regulations in 2003 outlawing workplace discrimination on the basis of sexual orientation. The current version of these provisions is in the Equality Act 2010. They cover ministers and deacons in employment. The courts would probably decide that they also cover parish ministers. We consider that, notwithstanding the terms of the Church of Scotland Act 1921, the civil courts would probably agree to hear any challenge by a disappointed minister or deacon.

**3.7.2** The Equality Act 2010 contains provisions which permit discrimination in relation to employment for the purposes of an organised religion. More specifically, a requirement related to sexual orientation may be applied when making an appointment if either of two conditions is satisfied: (1) the requirement is being applied to comply with the doctrines of the religion; or (2) the requirement

<sup>2</sup> and the European Union Directive from which it derives Council Directive 2000/78/EC of 27 November 2000,

is being applied to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers.

**3.7.3** It is possible that a refusal to ordain, induct or appoint a minister or deacon on the basis of that person's sexual orientation would give rise to a claim for discrimination. If such a claim were to be made, the Church could argue that the anti-discrimination provisions of civil law do not apply or, if they do, that the discrimination concerned is permissible either because of compliance with doctrine or because of the need to avoid conflict with strongly held convictions of followers of the Church of Scotland.

**3.7.4** So far, neither the European nor the UK courts have had to consider whether a church operating a mixed economy, such as the Overture sets out, is discriminating illegally. Until the law develops further, we cannot be certain what the outcome of a challenge would be. We will continue to monitor developments in this area and advise future Assemblies of any significant developments. However, at this time we believe that the Church has reasonable prospects of successfully defending a challenge. We give advice similar to that offered to the 2013 Assembly<sup>3</sup>: the level of risk is sufficiently low that it should not deter the Church from coming to its decision about the Overture on theological grounds.

**3.7.5** The Assembly should bear in mind that it would not be inconsistent with the past policy of the Church to indemnify and defend those who might, *in extremis*, find themselves facing a civil claim for discrimination.<sup>4</sup>

### 3.8 Conclusion

**3.8.1** We believe that, in spirit and in letter, the Overture does what the 2013 Assembly asked us to do. It offers

<sup>3</sup> Supplementary Reports to the General Assembly of the Church of Scotland 2013 (Legal Appendix consequent upon the Report of the Theological Commission on Same-Sex Relationships and the Ministry), section 6.7.

<sup>4</sup> Legal Appendix, section 6.8

a navigable route towards a place within the life of the Church where those who disagree about the traditional beliefs of the Church in relation to human sexuality may worship and witness together.

**3.8.2** The introduction of a mixed economy in relation to ministers and deacons in civil partnerships is not without risk. New tensions may be triggered but, by means of the Overture, we believe that these can be accommodated within the structures of the Church with personal and institutional integrity. Furthermore, we believe that the Overture minimises as far as possible the risk of successful challenge from outside the Church.

### 3.9 Further sections of Deliverance

**3.9.1** Although the 2013 Assembly was invited to approve one of two Overtures offered by the Theological Commission, it chose to approve neither. Therefore, no Overture was transmitted to presbyteries. However before it had decided on that course, the 2013 Assembly agreed the provisions given effect to in section 4 of the Deliverance. We believe that these can and should apply to the Overture or a related Overture if approved by this Assembly.

**3.9.2** In addition, pending final resolution of the matter, it is appropriate to continue the moratorium (section 5 of the Deliverance).

## 4. Discipline procedures – amendments to process

In the course of dealing with cases arising under various Acts: (1) the Discipline of the Ministry Act (Act III 2001), (2) the Protection against Bullying Act (Act IV 2007), (3) the Protection against Discrimination Act (Act V 2007) and (4) the Discipline of Elders, Readers and Office Bearers Act (Act I 2010), (“the Acts”), various issues have arisen, which the Committee would wish to address. These are:

**4.1 Size of the Judicial Proceedings Panel:** Following amendments agreed to the Acts by the General Assembly of 2012, the Judicial Proceedings Panel was created. It is from this Panel that the Special Committees of Presbytery, each consisting of three persons which investigate and prosecute

cases under the Acts, are appointed. The Panel currently consists of 30 persons duly appointed by the General Assembly. However, experience so far has suggested that more people need to be appointed to the Panel to carry out this valuable work. An amendment is therefore sought so that although such persons will still be appointed to the Panel by the General Assembly, the number to be appointed will be determined from time to time by the Legal Questions Committee. Since the General Assembly has already approved the principle of operating in this way, this would avoid the Assembly needing to approve precise numbers from year to year. An initial increase to 50 persons will then be considered by the Committee.

**4.2 New sub-headings:** Amendments are also sought to insert new sub-headings in the Acts, this to make it clearer that prior to launching an investigation, the Special Committee should carry out a sift of the evidence initially presented to determine whether any of the allegations are frivolous, vexatious or without merit.

**4.3 Time limit for requesting procedural review:** In the following situations under Discipline of the Ministry Act, the Protection against Bullying Act and the Protection against Discrimination Act, a complainer may request a procedural review of the decision taken: (1) where the Special Committee decides that the allegations are frivolous, vexatious or without merit and accordingly that it is not appropriate to carry out an investigation and (2) where the Special Committee after carrying out an investigation, determines that there is no case to answer. Experience in operating the Acts has highlighted that there is no time frame within which such a review must be requested and therefore an amendment is sought to require that the review be requested within fourteen days of the date upon which the Special Committee reported its decision to the complainer. The approach taken in drafting this amendment has been to insert a new subsection in each of the relevant Acts, which is itself divided into subsections, so as to make these provisions easier to read and understand. Much of the existing wording is repeated but in redrafting, the opportunity

has also been taken to clarify that (i) when intimating such a decision, the Special Committee must advise of the right to a procedural review, and (ii) when requesting a procedural review, the complainer must make intimation, in brief specific numbered propositions, of the relevant legal grounds for doing so.

**4.4 Procedural review and the Discipline of Elders, Readers and Office Bearers Act (Act I 2010):** At the Assembly of 2012, and taking effect from 1st January 2013, it was agreed that a procedural review should be made available to the complainer(s) in certain circumstances arising under the Discipline of the Ministry Act, the Protection against Bullying Act and the Protection against Discrimination Act, as mentioned in the previous paragraph. The right to request such a review was not, however, inserted into the Discipline of Elders, Readers and Office Bearers Act (Act I 2010). To provide consistency across the Disciplinary Acts, it is now suggested that a decision under Act I 2010, either not to carry out an investigation or not to carry out a further investigation, will not be subject to an appeal but instead will be subject to a procedural review carried out by three members of the Judicial Proceedings Panel.

**4.5 Instruction/Guidance to Respondent – confidentiality issues:** All of the Acts currently provide that where the Special Committee resolves, after investigation, that there is no case to answer, an instruction may be issued to the Respondent regarding his or her conduct. The Acts provide for this instruction to be issued by the Presbytery, but some Respondents or their legal advisers have objected on the grounds of confidentiality, to a matter which has been investigated but not taken further by a Special Committee, being aired on the floor of Presbytery and shared with the Presbytery's Superintendence Committee. This, it is argued, publicly imputes guilt without such a finding ever having been made. In order to meet these concerns, we believe that a Special Committee should no longer have power to issue such an instruction, non-compliance with which may carry disciplinary consequences. However, we believe that a Special Committee should have power to

issue guidance which, in the interests of confidentiality, should be kept by the Presbytery in a Record Apart.

**4.6 Amending Acts:** The issues outlined in sections 4.1 to 4.5 above are dealt with in the amending Acts annexed as Appendices C, D, E and F.

**4.7 Consolidating and cohering Act:** In the exercise of its independent oversight of ministers, deacons, elders, readers and office bearers, the Church has been faced with the difficulties of multiple complaints made under different Church Acts against multiple respondents with differing status under Church law, all focussed in a single case. This complicates all stages of a case, particularly where there are differing procedural requirements among Acts. We believe that the Church should move towards a single Act which, as far as possible, provides for one common disciplinary path for the Church. This would assist all parties and ensure that the Church continues to meet the legitimate expectations of its members, elders, readers, office bearers, deacons and ministers as well the broader public. Such an exercise would also permit a wider review and perhaps consolidation of existing legislation informed by the developing experience of the Church in disciplinary matters.

## 5. Complaints procedure

**5.1** It has become apparent that the Church needs to have a more appropriate way of dealing with some of the complaints which are received at local and regional level. There are the formal disciplinary procedures contained in the Discipline of Ministry Act (Act III 2001) and the Discipline of Elders, Readers and Office Bearers Act (Act I 2010) along with the Protection against Bullying Act (Act IV 2007) and the Protection against Discrimination Act (Act V 2007). While all complaints should be taken seriously, the formality and weight of these procedures may be inappropriate and unhelpful in addressing some. We believe that the Church should offer means of addressing complaints which are proportionate to the matter complained of and which assist both complainer and respondent and the Church to resolve conflict and concern fairly and constructively.

5.2 Recognising this, some Presbyteries have developed their own procedures. For example the Presbytery of Ayr uses its own Protocol. Others use more informal means. There is still a place for the “informal chat” and there are situations which require to be dealt with under formal disciplinary procedure, but we believe that an intermediate procedure is required. This should be easily accessible, simple and transparent and available across the Church.

5.3 In developing such a Complaints Procedure, we have gratefully worked with the Presbytery Clerks’ Forum. The wisdom and experience of our Presbytery Clerks is invaluable and the documents in Appendix G are largely the work of members of their Forum.

5.4 The proposed Complaints Procedure emphasises the possibilities of mediation and conciliation. There is a strong feeling across the Church that often a person’s anger or anxiety can be addressed simply by listening carefully and responsively. This need not be a drain on time and may avoid prolonged or escalating conflict.

5.5 We propose that these documents appear on the Church’s website suitably signposted. The first page would be entitled “Information about making complaints”, with links to two other pages: “What is and what is not a complaint?” and “Making a complaint”. The latter would contain the actual complaints procedure.

5.6 The proposed Complaints Procedure would have four stages. Some key points are:

- Contact must initially be made with the Presbytery Clerk.
- Thereafter the complaint must be set out in writing.
- Each Presbytery (or group of Presbyteries) will establish its own Complaints Committee, to which complaints will be referred. It is thought that having such a Committee will streamline the process and enable expertise to be developed.
- The Complaints Committee will investigate the complaint. Wherever possible, it will facilitate mediation or conciliation between the parties.

- Potential outcomes of the investigation process are included at Step 4. Where a complainer remains dissatisfied, a process for review could then follow. This would take the form of a procedural review, conducted by three presbyters not previously involved (or if appropriate, three persons from a neighbouring presbytery also with no prior involvement).
- Following advice from OSCR, provisions have been made for timescales and review.

## 6. Alternative Dispute Resolution

6.1 In bringing to the General Assembly of 2013 new procedures for the hearing of appeals against decisions of the Courts of the Church, the Committee sought to provide the Church with robust, effective and efficient procedures which would both ensure that the Courts of the Church, when acting in a judicial capacity, continue to operate to the highest standards of integrity and in accordance with natural justice, and which would give confidence in, and a clearer understanding of, the Church’s legal process.

6.2 The Committee is, however, mindful of the words of St Paul in chapter six of his first letter to the Corinthians regarding the inappropriateness of law suits between the followers of the Lord Jesus Christ. It is a matter of sorrow for the whole Church when any dispute between any of its members can only be settled by recourse to litigation. If parties to a dispute can be empowered to, and assisted in, achieving a resolution of their differences by less formal means, forgiveness and healing may come more easily. The Committee has consulted with *Place for Hope* and is grateful for the insights received through that conversation.

6.3 The Committee now brings to the General Assembly a proposal that parties to a dispute be given an opportunity to resolve their differences through alternative dispute resolution. The Committee proposes a new Alternative Dispute Resolution Processes Act (“the Act”) as set out in Appendix H.



**6.4** Alternative dispute resolution could be formal mediation, but could also be a process of conciliation or less formal process of facilitated conversation. The Act provides parties to a dispute, should they so agree, with space in the early stages of a dispute to seek to resolve their differences. If parties do decide to enter into a period of alternative dispute resolution, any case or appeal which has commenced will be suspended for such period of time as is required, subject to a maximum of twelve weeks (with power to the relevant Church court to make a further extension of time, up to an overall maximum of twenty six weeks). If parties do not wish to resolve their difference through alternative dispute resolution, that fact will not prejudice any subsequent legal proceedings. In some circumstances alternative dispute resolution may not be appropriate and the Acts of the General Assembly in respect of which alternative dispute resolution may not be used are listed in the Schedule to the Act.

## **7. Change to Standing Order 93(i) Time Limits**

**7.1** In order to expedite business at the Assembly, the Assembly Arrangements Committee proposes that Conveners should have a maximum of 4 minutes to respond to a question.

**7.2** This involves a small change to Standing Orders, as follows:

*In Standing Order 93(i), after "Convener giving in the Report of his or her Committee and moving thereon (seconding to be formal)*

20 minutes";

*insert:*

"Convener responding to a question 4 minutes".

## **8. Marriage and Civil Partnership (Scotland) Act 2014**

**8.1** This Act was passed by the Scottish Parliament on 4 February 2014. It will not come into force until necessary amendments to the Equality Act 2010 are passed by the UK Parliament.

**8.2** Throughout the passage of the Act and the pre-legislative consultations, the Committee has reiterated that

the Church cannot support the introduction of same sex marriage or religious civil partnerships. We have explained that only the General Assembly, acting under Barrier Act procedure, can change the Church's understanding of marriage as properly between one man and one woman.<sup>5</sup>

**8.3** The Committee continued to make representations on other matters to the Scottish Government and Parliament and ensured that the Church's was a constructive voice in the national debate. A number of changes to the statutory scheme were secured as a result. Nevertheless the Committee remains concerned that the scheme is vulnerable to successful challenge because under its provisions ministers and deacons of the Church carry out weddings as agents of the state. It is highly unlikely that the state itself would be permitted to act in a manner which the European Convention on Human Rights would characterise as discriminatory. The law in this area is developing and is influenced by social and political developments across Europe.

**8.4** We also made strong representation on behalf of public servants who may be required by their employers to speak or act in support of same sex marriage against their genuine religious beliefs. We are particularly concerned about registrars and teachers. The Scottish Government offered little comfort, leaving it to individual employers to institute their own policies and to deal with their employees as they see fit, albeit within existing employment law.

**8.5** We do not expect an immediate challenge to the statutory scheme. Nor do we expect that a successful challenge would result in ministers or deacons being required to carry out same sex marriages. However, if the statutory scheme was ruled to be in breach of EHCR anti-discrimination provisions and was dismantled, the Church and its ministers and deacons might have to decide whether to solemnize all marriages, same and different

<sup>5</sup> The Church's current theology on marriage can be found in the Reports to the General Assembly of the Church of Scotland 2012, (Working Group on Human Sexuality) 5/21 to 5/54

sex, or to withdraw from the statutory scheme. One option might be to carry out marriages which are solely religious ceremonies which may or may not be recognised by the state as having particular legal consequences.

**8.6** It was this concern, among others, that prompted the 2013 Assembly to instruct the Committee, jointly with the Ministries and Church and Society Councils, Ecumenical Relations Committee and Theological Forum, to explore the possibility of ministers and deacons ceasing to act as Civil Registrars for the purpose of solemnizing marriages and to report to the General Assembly of 2015.

**8.7** We have prepared an interim report for those Councils and Committees which explains our view that the legal position is uncertain and developing. There are risks in continuing to act as agents of the state in carrying out marriages under the Marriage (Scotland) Act 1977, whether or not the Church opts in. However, unless and until the picture clarifies, we do not believe that external legal considerations require the immediate withdrawal of the Church and its ministers and deacons. We recommend that the Church be alert to developments in European, UK and Scots law and we will continue to monitor the situation.

**8.8** The Principal Clerk has placed guidance on the Church website setting out the immediate implications for the Church of the Marriage and Civil Partnership (Scotland) 2014. This is available here: <http://bit.ly/1gn2pcZ> or under Speak out/Same sex marriage.

## **9. Keeping of Records in Digital Formats**

### **9.1 Digital Records**

**9.1.1** The General Assembly in 2012 asked the Legal Questions Committee: *"In the light of the advantages and disadvantages of digital formats, to review the process by which Presbyteries, Kirk Sessions and central Councils deposit completed volumes of their rolls and records with the public archives, and to report progress to the General Assembly of 2014"*.

**9.1.2** As part of this review, the Committee considered whether a radical modernisation of the record keeping

practices of the Church was now appropriate. This might make it possible for Presbyteries, Kirk Sessions and central Councils to move away from the traditional process of keeping of written records which in time are deposited with the Scottish Records Office.

**9.1.3** In carrying out this review the Committee is indebted to the Depute Clerk of the Presbytery of Stirling, who from a place of considerable knowledge, provided the Committee with a comprehensive summary of the significant issues which, at this time, remain uncertain or unresolved. This input has left the Committee in little doubt that, no matter the current state of advances in digital technology, the traditional form of written record keeping for such important documents as membership records and minutes of courts and Councils should be maintained.

### **9.2 Digital formats**

**9.2.1** In considering this matter the Committee is clear that the practical options around the keeping of records have, in recent years, expanded beyond recognition. However, the degradation of records kept on microfiche, Compact Disc and Digital Versatile Disc bear testimony to the fact that there remain many open questions about formats which are untested over the long haul. While the remit of the Committee was confined to the process of depositing information with the public archives, the prior question of the format in which records are kept is vital and inevitably must also be considered.

**9.2.2** Sadly, there is still a lack of concrete evidence which would guarantee that certain digital formats will remain readable in 5, 25 or 100 years' time. Furthermore, like many other electronic developments in the past, there is still no settled hardware format that is guaranteed to be part of the landscape over the same time span.

**9.2.3** Security is also a significant factor. Digital formats are more exposed to the possibility of alteration by unauthorised hands or even by authorised hands. It is easier too, for such records to be transferred inappropriately and this brings with it the attendant

risks of breaches to Data Protection law. Avoiding such difficulties involves significant costs associated with the provision of security and/or encryption at appropriate levels.

**9.2.4** Data Protection law also lays down conditions as to the destruction of personal information within certain timeframes. If a digital format is used for the keeping of records, it needs to be capable of being managed so that such law can readily be complied with.

### 9.3 Current Issues for Digital Records

**9.3.1** While the Committee remains of the view that this is not the appropriate time for the Church to embark on a radical change in its record keeping procedures it, nonetheless, believes that this remit has given the Church the opportunity to remind itself of some of the important matters that should be in the forefront of the mind of those who are responsible for record keeping at local, regional and national level.

**9.3.2** Some issues to bear in mind in the keeping of any records are:

- That a clear distinction should be drawn between permanent records and working documents.
- Care should be taken to ensure that formats are capable of surviving upgrades and changes in software platforms.
- The organisation of records should incorporate filing systems and naming protocols which facilitate easy searching of records. For example, minutes should be named consistently; showing the 'year month day' and then continuing with any further descriptor.
- That proper organisation of records should also help to make sure that only the right people have access to any particular set of records. Password security should be used for material which should not be open to general access.
- Back up arrangements should be considered so that records remain intact in the event of a hardware failure.
- The management of data under the Data Protection Act should be properly organised, for example the Act

requires that time-expired material should be cleared out promptly.

- Those who manage data need to be made aware of the law and those involved need to have systems in place which ensure the deletion of material no longer required.

### 9.4 Management of records

**9.4.1** Following on from our consideration of issues applying to digital records, if the Church wished to put in place a recommended management policy for record handling, which would apply to both paper and digital records, these would be some of the essential elements that would have to be covered:

- The policy should clearly state what is and what is not included and why.
- The policy should be simple so that anyone can comply with it.
- There should be training available, appropriate to the level of use.
- The policy should allow for a wide range in the ability/ interest/ time availability/ motivation/ equipment/ software of users. It also should allow for the fact that those producing records at local level are normally amateur volunteers.
- All records, both paper and digital, should still be covered by the normal attestation of records process.
- Some person or committee within the Church should be responsible for the records management policy and for monitoring both compliance and innovations.
- Someone with specific formal records management training should be involved in developing the policy.
- The policy should look at how to integrate existing paper and electronic records.
- The policy should look at physical security of records, both from the point of view of tampering with records (whether accidentally or deliberately), and also physical loss by equipment or storage becoming unusable.
- Like the Church of Scotland, records management is *semper reformans semper reformanda* and the policy should be revised periodically in the light of usage and experience.

### 9.5 Further recommendation

**9.5.1** The Church would benefit from recognising that records management should be a high priority and that proper record management is a significant aid to the efficiency of our organisation. The corollary also holds true, *ie* lack of a ready means to access past decisions and work can lead to wasteful and often inconsistent re-covering of old ground.

**9.5.2** The Council of Assembly through its Governance Group should be asked to consider whether a national records management policy should be developed and, if so, to consider what shape that might take. Furthermore consideration should be given to whether such a policy should be enshrined in the law of the Church.

### 10. Examination of Records

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

*In the name of the Committee*

ALAN J HAMILTON, *Convener*  
SHEILA M KIRK, *Vice-Convener*  
JOHN P CHALMERS, *Secretary*

### ADDENDA

#### The Reverend Sheila Kirk

This year the Rev Sheila Kirk, currently Vice-Convener of the Committee, retires having completed her term of office. The Committee wishes to express its warm and grateful appreciation to Sheila for all the hard work, wisdom and insight which she brought to her role. Sheila has most successfully used her legal background to benefit the life of the Church. In particular, Sheila led the team and worked tirelessly on the new Appeals procedure which was approved by the Assembly last year as an Interim Act.

The Committee was also delighted to note Sheila's recent marriage to the Reverend Bob Fowlie, her fellow minister in the Presbytery of Buchan, and wishes Sheila and Bob every blessing for their future happiness together.

#### Sheriff John Horsburgh – Presbyterial Commission

After 12 years' service as one of the two Conveners of the Presbyterial Commission, Sheriff John Horsburgh, QC last year intimated his resignation as Convener following upon his retirement from the Shrieval bench. John, an elder at Inverleith St Serf's in Edinburgh, served as Convener of the Commission from its establishment in 2001 and contributed greatly to shaping its practice and procedures down the years. Whilst, thankfully, the Commission has over the years not required to meet frequently, cases, when they have come, have often been complex and invariably sensitive and stressful for the parties concerned. John brought his considerable analytical and forensic skills to his role as Convener, dealing with those appearing before the Commission with tact, patience and firmness. His written judgements were always models of clarity and the "lay" members serving on the Commission were greatly assisted by his explanations of legal issues and his advice on issues such as the assessment of evidence and submissions. John is not allowing his brain to fall idle as he now pursues the study of advanced mathematical theory at Edinburgh University. The Committee wishes to place on record its sincere thanks to him for his invaluable service to the Church and to wish him and his wife Johann every blessing for this future.

### APPENDIX A The 2013 Principles

1. Would not require the Church to abandon its traditional position.
2. But would allow individual congregations – by decisions of their Kirk Sessions – to depart from the Church's traditional position.
3. Would allow ministers and deacons (current and prospective) who are in civil partnerships to be selected for training and to be trained. Would also

- allow them to be ordained/inducted into a Charge the Kirk Session of which had decided to depart from the Church's traditional position.
4. Would cover inducted ministers and ministers and deacons working in other roles in congregations.
  5. Would not enable one congregation to depart from traditional position where others in a linking do not wish to do so.
  6. Would enable a Kirk Session to change its mind. But a minister or deacon who had been appointed to a congregation whose Kirk Session had decided to depart from the traditional position would not be prejudiced by a change of mind by the Kirk Session.
  7. Would preserve liberty of opinion and responsible expression. Would not permit harassing or bullying.
  8. Preserves right of members of presbyteries – whatever views – to engage or not in ordinations/inductions.

### APPENDIX B MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS OVERTURE

The General Assembly, adopt the Overture the tenor whereof follows: and transmit the same to Presbyteries under the Barrier Act, directing that returns be sent to the Principal Clerk not later than 31 December 2014.

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

1. For the purposes of this Act:
  - (a) "appointment" shall mean the appointment of a minister (other than the induction of a minister) or deacon to work with or within the life and witness of a congregation. An appointment may be part or full-time, paid or unpaid. An appointment may be made by the Kirk Session, Congregational Board, Deacons' Court, Committee of Management or other body responsible for employing persons on behalf of a congregation or by the Presbytery or by a Council or Committee of the Church.

- An appointment shall include the appointment of an Interim Moderator, Ordained Local Minister, Interim Minister or Transition Minister. "Appointed" shall be construed accordingly.
- (b) "call" means the instrument referred to in the Vacancy Procedure Act (Act VIII 2003), sections 25 and 28;
  - (c) "civil partnership" shall have the meaning assigned to it in the Civil Partnership Act 2004, section 1.<sup>6</sup>
  - (d) "congregation" shall have the meaning assigned to it in the Appraisal and Adjustment Act (Act VII 2003), section 1(b).
  - (e) "deacon" shall mean a person who is a deacon within the meaning of the Deacons Act (Act VIII 2010), section 1.
  - (f) "linking", "deferred linking" and "deferred union" shall have the meanings assigned to them in the Appraisal and Adjustment Act, section 10.

<sup>6</sup> Since the Legal Questions Committee received its remit from the General Assembly of 2013, legislation on same sex marriage has been passed by the Scottish Parliament, in the form of the Marriage and Civil Partnership (Scotland) Act 2014. At the time of the writing the Act has yet to receive Royal Assent; thereafter it will not be brought into force until the appropriate amendments to the Equality Act 2010 have been passed by the UK Parliament. The Legal Questions Committee notes that its remit has been to draft an Overture which addresses the position of ministers and deacons who enter into civil partnerships, and it has no remit to exceed this by addressing the position of (1) ministers and deacons who enter into Scottish same sex marriages and/or (2) ministers and deacons who enter into civil partnerships or same sex marriages in jurisdictions outwith Scotland. Some would take the view that the Overture should also deal with such situations, and would argue that the Overture should be amended accordingly. Others would take the view that there are significant theological issues to be debated and dealt with in relation to these situations before any Church legislation can be passed, and might wish to see such questions initially remitted to the Theological Forum for further consideration. Please note however that the matters raised in this footnote concern ministers or deacons who themselves enter into civil partnerships and/or same sex marriages, and the consequent effect upon their selection, training, ordination and induction, and not about the distinct question of whether ministers and deacons of the Church of Scotland may be involved in the conducting of same sex marriages.

- (g) "minister" shall include both a person who is a minister within the meaning of the Ministry Act (Act II 2000), section 2 and a person who is an Ordained Local Minister within the meaning of the Ordained Local Ministry Act (Act IX 2011), section 2.
- (h) "Presbytery" shall mean the presbytery of the bounds of the congregation concerned.
- (i) "vacancy" shall mean the state in which a congregation finds itself when it is without an inducted minister.
2. (1) The historic and current doctrine and practice of the Church in relation to human sexuality and their application to the ministers and deacons of the Church are hereby affirmed.
- (2) For the avoidance of doubt, the historic and current doctrine and practice of the Church in relation to human sexuality, their application to the ministers and deacons of the Church and the provisions of this Act are points on which there is liberty of opinion in accordance with Article Declaratory V. Departure from the doctrine of the Church is permitted to this extent.
- (3) In recognition of the diversity of views within the Church about the historic and current doctrine and practice of the Church in relation to human sexuality and their application to the ministers and deacons of the Church and in the interests of the peace and unity of the Church, departure from the practice of the Church shall be permitted to Kirk Sessions in terms of sections 3, 4 and 5 of this Act only. In this Act, the term 'depart' and its variants shall be construed accordingly.
3. (1) As from the date of this Act, a Kirk Session may decide to depart in order to permit the ordination, induction or appointment of a minister or a deacon who is in a civil partnership.
- (2) A Kirk Session may decide that it wishes to depart only:
- (a) in time of vacancy after meeting with the advisory committee in terms of Section 12(2)(a) of the Vacancy Procedure Act and before the appointment of the nominating committee in terms of section 14 of the Vacancy Procedure Act;
- (b) in time of vacancy between the Presbytery instructing the appointment of a fresh nominating committee and the appointment of that committee in terms of section 26(b) of the Vacancy Procedure Act;
- (c) at the time when the making of an appointment is being considered and before applications are sought;
- (d) in terms of section 3(3) of this Act; or,
- (e) in terms of section 3(9) of this Act.
- (3) Where a congregation in vacancy has appointed a nominating committee prior to the date of this Act, the Kirk Session shall be entitled to make a decision to depart in respect of that vacancy in accordance with the provisions of sections 3(4)-(7).
- (4) When deciding whether or not to depart, the Kirk Session shall take account of the peace and unity and pastoral needs of the congregation and of any parish or other grouping of which it is a part.
- (5) To be effective, a decision to depart shall require to be taken in respect of each induction or appointment and may only be taken in accordance with the following process:
- (a) A meeting of the Kirk Session shall be held to take a first vote, of an indicative nature only, on the matter. The date and time of such meeting, and its purpose, must be properly intimated to the congregation on at least two Sundays prior to its date.
- (b) At the first meeting, if a majority of those present and entitled to vote, cast their votes in favour of the decision to depart, then a second vote, of a determinative nature, shall require to be held at a later meeting of the Kirk Session.

- (c) If a meeting for a second vote is to be held, the date and time of such meeting, and its purpose, must be properly intimated to the congregation on at least two Sundays prior to its date.
- (d) At a second meeting, if a majority of those present and entitled to vote, cast their votes in favour of the decision to depart, then the decision to depart shall be deemed to be taken.
- (e) If at either a first meeting or a second meeting, the Kirk Session's vote in favour of the decision to depart does not reach the required majority of those present and entitled to vote, then the matter shall not proceed further in respect of such induction or appointment.
- (6) Meetings in terms of the process outlined in section 3(5) shall be constituted in prayer in accordance with the law and practice of the Church. Only those members of the Kirk Session present at the meeting shall be entitled to vote. Voting shall be by secret ballot using voting papers printed in the form of Schedule 1 hereto. Intimation of the meetings shall be in terms of the edict annexed in Schedule 2 hereto (amended appropriately depending upon whether the meeting in question is a first meeting or a second meeting).
- (7) A Kirk Session which has decided to depart shall intimate its decision by sending an extract minute to the Presbytery Clerk within seven days.
- (8) (a) A minister or deacon in a civil partnership may not be inducted or appointed to a congregation which is in a linking or in deferred linking or deferred union unless the Kirk Sessions of all the other congregations affected have also decided and intimated that they wish to depart.
- (b) Where it is an explicit provision of a Basis of Union or Linking that the minister of one of the congregations involved shall be minister of the united or linked charge and that minister is in a civil partnership, the Basis of Union or Linking shall not be put to a vote of any of the other congregations in terms of the Appraisal and Adjustment Act, section 11(1), unless their Kirk Sessions have decided and intimated that they wish to depart.
- (9) (a) In the event of a minister or deacon subsequently entering into a civil partnership, that minister or deacon having been inducted or appointed to a congregation the Kirk Session of which had not decided to depart in relation to his or her induction or appointment, the Presbytery shall:
- (i) move without delay to offer support and counsel to all affected parties; and,
  - (ii) in accordance with the provisions of sections 3(4)-(7) and as soon as is practicable, convene the appropriate meetings of the Kirk Session at which the Kirk Session may decide that it wishes to depart.
- (b) Unless the Kirk Session decides to depart in terms of section 3(9)(a)(ii), the pastoral tie shall be dissolved or the appointment terminated as appropriate.
- (c) Where a congregation is in a linking or in deferred linking or deferred union, the pastoral tie shall be dissolved or the appointment terminated unless the Kirk Sessions of all the other congregations affected have also decided and intimated that they wish to depart.
- (d) In the event of the pastoral tie being dissolved in terms of section 3(b) or (c), provision shall be made for the minister in the same way as provided in section 9 of the Congregations in Changed Circumstances Act (Act VI 1984), with the proviso that the Committee which would review the

- situation at the end of a two-year period in consultation with the Presbytery shall be the Ministries Council.
- (e) Except as provided for in section 3(9)(f), sections 3(9)(a)-(d) shall apply to any minister or deacon whether inducted or appointed before or after the date of this Act.
  - (f) In respect of ministers and deacons who were ordained or inducted or appointed before 31 May 2009, sections 3(9)(a)-(d) shall not apply in respect of a charge or appointment held as at the date of this Act.
- (10) For the avoidance of doubt a person in a civil partnership may only be ordained by a Presbytery as an Ordained Local Minister where there is an agreed designated appointment to a congregation the Kirk Session of which has decided to depart.
4. Subject to section 3(9), the entitlement of a minister or deacon who was ordained or inducted or appointed before 31 May 2009 to remain as a minister or deacon on the same terms and with the same status as any other minister or deacon shall not be prejudiced because he or she was or is in a same sex relationship. Nevertheless he or she may not be inducted or appointed to a congregation the Kirk Session of which has not decided to depart in terms of section 3.
  5.
    - (1) A person who is in a civil partnership shall be eligible for selection, training and, as provided for in section 3, ordination, as a minister or deacon.
    - (2) Once ordained, a minister or deacon who is in a civil partnership shall have the same status, rights and responsibilities as any other minister or deacon respectively, except that he or she may not be inducted or appointed to a congregation the Kirk Session of which has not decided to depart in terms of section 3.
  6. In relation to the doctrine and practice of the Church affirmed in section 2, the right to depart provided for in section 3 and the provisions of sections 4 and 5:
    - (1) A Presbytery shall not be entitled to refuse to sustain a call to a minister solely on the ground that he or she is in a civil partnership, provided that the call is made by the members and adherents of a congregation the Kirk Session of which has decided to depart in terms of section 3 of this Act. The rights and responsibilities of a Presbytery to exercise superintendence over all the congregations within its bounds are otherwise unchanged.
    - (2) A member of a Presbytery may decline, on the ground of his or her differing convictions, to accept appointment or to continue as Interim Moderator of a congregation the Kirk Session of which has decided to depart in terms of section 3 of this Act.
    - (3) A member of a Presbytery may decline, on the ground of his or her differing convictions, to attend the ordination, induction or introduction or a minister or deacon who is in a civil partnership within the bounds of the Presbytery.
    - (4) Other than as provided for in sections 6(2) and (3) a member of a Presbytery shall not be excused the duties or responsibilities of membership.
    - (5) A Presbytery shall take account of differences of opinion among its members and congregations when conducting its business and fulfilling its duties and responsibilities and shall at all times have regard to the peace and unity of the Church.
    - (6) If required, a Presbytery shall invite one or more members of one or more other Presbyteries to associate with the Presbytery for the purpose of effecting an ordination, induction or introduction. Such members of other presbyteries shall be deemed to be members of the inviting Presbytery for the purpose of effecting the ordination, induction or introduction only. Section 30 of the Church Courts Act (Act III 2000) shall be construed accordingly.



7. The provisions of this Act give effect to the strongly held religious convictions of significant numbers of the followers of the Church of Scotland.
8. For the avoidance of doubt, a person with a legitimate interest who is aggrieved by a decision made by a court in terms of this Act, may appeal to Presbytery only on one or more of the legal grounds specified in section 1 of the Intimation of Appeals Act (Act V 2004).

### Schedule 1

Voting Paper – section 3(6)

<b>FOR</b> departure from the Church's practice in relation to human sexuality in respect of [ <i>*the current vacancy / *the proposed appointment of a (insert title of appointment)</i> ]	
<b>AGAINST</b> departure from the Church's practice in relation to human sexuality in respect of [ <i>*the current vacancy / *the proposed appointment of a (insert title of appointment)</i> ]	

*Footnote: A vote in favour of departure will allow applications for [*\*the current vacancy / \*the proposed appointment of a (insert title of appointment)*] to be considered from, amongst others, individuals who are in a civil partnership.*

*\*Please select appropriate alternative*

### Schedule 2

Edictal intimation of Kirk Session meeting to be read out to congregation – section 3(6)

*To be read on two Sundays*

This is intimation that a meeting of the Kirk Session of this congregation is to be held at [*place*] on [*date*] at [*time*].

In recognition of the diversity of views within the Church about the historic and current doctrine and practice of the

Church in relation to human sexuality and in the interests of the peace and unity of the Church, departure from the practice of the Church in relation to human sexuality is permitted in certain circumstances.

The purpose of the Kirk Session meeting just intimated will be for the Kirk Session to decide whether to depart from the Church's practice in relation to human sexuality in order for applications for [*\*the current vacancy / \*the proposed appointment of a (insert title of appointment)*] to be considered from, amongst others, individuals who are in a civil partnership.

In terms of the process for a decision to depart contained in the [Ministers and Deacons in Civil Partnerships Act] (Act [ ] [2015], this will be a [*\*first meeting of the Kirk Session on this matter and therefore the vote will be of an indicative nature only. It will require to be followed up at a subsequent meeting of the Kirk Session by a second vote in favour of the decision to depart in order to take effect. OR \*second meeting of the Kirk Session on this matter and therefore the vote will be of a determinative nature. If the vote is in favour of the decision to depart, then that decision will take effect.*]

Both votes on this matter must achieve a majority of those present and entitled to vote in order to take effect.

*\*Please select appropriate alternative.*

*Note: the form of the above edictal intimation will require to be amended appropriately where the charge in question is part of a linking, deferred linking or deferred union.*

## APPENDIX C

### ACT AMENDING THE DISCIPLINE OF MINISTRY ACT (ACT III 2001)

*Edinburgh, [ ] May 2014, Session [ ]*

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

1. *Delete the existing definition at 1(1)(e) and substitute:*  
 “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 one further term. 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.”
  2. *Amend the sub-headings in the Act as follows:*
    - (i) *Before section 4(1) delete the existing heading and insert a new heading “Part 2 Initial Consideration”, and*
    - (ii) *Before section 5(1) insert a new heading “Part 3 Investigatory Proceedings”, and then renumber the remaining sub-headings in the Act appropriately.*
  3. *Delete the existing section 4(3) and substitute the following:*
    - (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.”

4. *Delete the existing section 8 and substitute a new section 8 as follows:*
- (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."

#### APPENDIX D ACT AMENDING THE PROTECTION AGAINST BULLYING ACT (ACT IV 2007)

*Edinburgh, [ ] May 2014, Session [ ]*

The General Assembly hereby enact and ordain that the Protection against Bullying Act (Act IV 2007), as amended, shall be further amended as follows:

1. *Amend the sub-headings in the Act as follows:*
  - (i) *Before section 9 delete the existing heading and insert a new heading "Initial Consideration".*
  - (ii) *Before section 11 insert a new heading "Investigation of Complaint".*
2. *Delete the existing section 10(3) and substitute the following:*  

"If the Special Committee decides that it is not appropriate to carry out an investigation in respect of all or any of the allegations made, the Special Committee shall report that decision to the Presbytery. 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. At such time the Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart.”
3. *Delete the existing section 10(4) and substitute the following:*
    - (a) “For the avoidance of doubt a decision of the Special Committee 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.
    - (b) 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.
    - (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific numbered propositions, the grounds (as specified at sub-paragraph (e) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
    - (d) 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.
    - (e) 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.
  4. *Delete all wording appearing after the second sentence of section 14. As a new section 15 add the following:*
    - (a) “For the avoidance of doubt a decision of the Special Committee that no further investigation shall be carried out 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.
    - (b) 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.
    - (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific numbered propositions, the grounds (as specified at sub-paragraph (e) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
    - (d) 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.
    - (e) 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
  - (f) 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.
  - (g) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review.”

- Special Committee which materially influenced its decision; and, (b) that its decision was materially influenced by some incorrect fact.
- (f) 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.
- (g) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review."

*and then re-number the remaining sections of this Act accordingly.*

5. *In section 19, delete the words "10 and 14" where they appear and substitute the words "10 and 15".*

#### **APPENDIX E**

#### **ACT AMENDING THE PROTECTION AGAINST DISCRIMINATION ACT (ACT V 2007)**

*Edinburgh, [ ] May 2014, Session [ ]*

The General Assembly hereby enact and ordain that the Protection against Discrimination Act (Act V 2007), as amended, shall be further amended as follows:

1. *Amend the sub-headings in the Act as follows:*
  - (i) *Before section 12 delete the existing heading and insert a new heading "Initial Consideration".*
  - (ii) *Before section 14 insert a new heading "Investigation of Complaint".*
2. *Delete the existing section 13(3) and substitute the following:*  
*"If the Special Committee decides that it is not appropriate to carry out an investigation in respect of all or any of the allegations made, the Special Committee shall report that decision to the Presbytery. 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. At such time, the Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart."

3. *Delete the existing section 13(4) and substitute the following:*
  - (a) "For the avoidance of doubt a decision of the Special Committee 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.
  - (b) 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.
  - (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific numbered propositions, the grounds (as specified at sub-paragraph (e) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
  - (d) 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.
  - (e) 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.

- (f) 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.
- (g) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review."
4. *Delete all wording appearing after the second sentence of section 17. As a new section 18 add the following:*
- (a) "For the avoidance of doubt a decision of the Special Committee that no further investigation shall be carried out 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.
- (b) 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.
- (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific numbered propositions, the grounds (as specified at sub-paragraph (e) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
- (d) 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.
- (e) 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.

- (f) 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.
- (g) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review."

*and then re-number the remaining sections of this Act accordingly.*

5. *In section 22, delete the words "13 and 17" where they appear and substitute the words "13 and 18".*

## APPENDIX F

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

*Edinburgh, [ ] May 2014, Session [ ]*

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

1. *Amend the sub-headings in the Act as follows:*
  - (i) *Before section 14 delete the existing heading and insert a new heading "Initial Consideration".*
  - (ii) *Before section 18 insert a new heading "Investigation of Complaint".*
2. *Delete the existing section 17 and insert a new section 17 as follows:*
  - (1) "If the Special Committee of Presbytery decides that it is not appropriate to carry out an investigation in respect of all or any of the allegations made, the Special Committee of Presbytery shall report that decision to the

Presbytery for its approval. 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. The Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart.

- (2) (a) In the event that the Presbytery approves the decision of the Special Committee, it shall recall any administrative suspension imposed in terms of section 9. The Presbytery shall intimate its approval of the Special Committee's decision to the person or persons (if any) who made the allegation or allegations.
  - (b) For the avoidance of doubt an approved 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 Presbytery intimated its approval of the decision of the Special Committee of Presbytery.
  - (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 approval of the Special Committee's decision to the person or person who made the allegation or allegations, the 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.
- (3) In the event that the Presbytery does not approve the decision of the Special Committee, it shall give such further instruction to the Special Committee as is necessary."
    3. *Delete the existing section 22 and substitute a new section 22 as follows:*
      - (1) "Upon consideration of the allegations and evidence submitted and of any answers given, the Special Committee of Presbytery shall be entitled to resolve that no further investigation shall be carried out if there is no case to answer. In that event, it shall report to the Presbytery for approval. 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. The Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart.

- (2) (a) In the event that the Presbytery approves the decision of the Special Committee, it shall recall any administrative suspension imposed in terms of section 9. The Presbytery shall intimate its approval of the Special Committee's decision to the person or persons (if any) who made the allegation or allegations.
- (b) For the avoidance of doubt an approved decision that no further investigation shall be carried out 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 Presbytery intimated its approval of the decision of the Special Committee of Presbytery.
- (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 approval of the Special Committee's decision to the person or person who made the allegation or allegations, the 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.
- (3) In the event that the Presbytery does not approve the decision of the Special Committee, it shall give such further instruction to the Special Committee as is necessary."
4. *Insert the following wording at the start of section 25: "Subject to the terms of sections 17 and 22 of this Act providing for procedural review rather than appeal,"*

## **APPENDIX G**

### **Complaints Procedure**

#### **CHURCH OF SCOTLAND**

#### **Information about making complaints**

#### **About the Church**

The Church of Scotland seeks to ensure that the Church is a safe, responsible and caring environment for all. To achieve that, rules and procedures have been put in place to enable the Church to deal with any acts of inappropriate or unethical behaviour by any Church minister, deacon or office bearer<sup>7</sup>.

These rules differentiate between serious issues of conduct, and other acts of inappropriate behaviour.

<sup>7</sup> An office bearer would include an elder, reader, Session Clerk or Treasurer; for the complete definition of an office bearer please refer to the Church law contained in the Discipline of Elders, Readers and Office Bearers Act (Act I 2010) which is available on the Church's website under "Church Law".



For serious issues, the Church has internal disciplinary procedures. In some circumstances, it may be appropriate to refer the matter to the Police, if the complainant has not already done so.

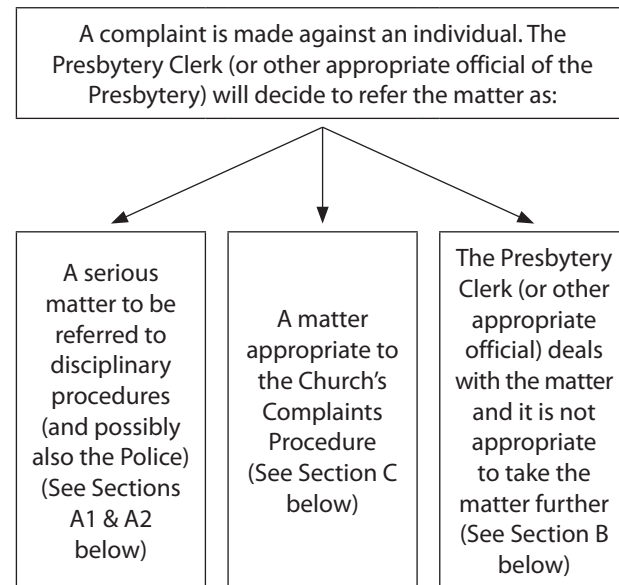
For less serious matters, the Church has a Complaints Procedure. The aim of this Procedure is neither to trivialise serious matters nor on the other hand to treat minor matters with undue seriousness. In this Procedure, the Church wishes to prioritise the use of mediation and conciliation, as experience suggests that this is the best way to ensure an outcome where everyone involved feels that their concerns have been appropriately discussed and dealt with.

In framing its Complaints Procedure, the Church has been strongly of the belief that a person with a legitimate grievance must be listened to and their complaint should be properly and fairly addressed.

Please note that the information which follows is for guidance only, and is not a substitute for the detailed law which appears in the Acts and Regulations of the General Assembly. These Acts and Regulations are available on the Church's website under "Church Law".

If you have a complaint to make against a minister, deacon or office bearer of the Church, then there are various ways in which the Church may determine that should be addressed, as illustrated in the flowchart below.

#### Possible ways in which a complaint may be dealt with:



#### A1: Internal disciplinary procedures

If the allegation is a serious one, it will immediately be referred to be investigated in terms of the Church's internal disciplinary procedures. If you are the person who made the complaint, you will be given information about the process which will be followed. This will differ depending upon whether the allegations are against a minister or deacon, or against an office bearer. The procedure may also differ depending on the nature of the allegations, for example if there are issues of bullying or discrimination and depending upon whether the person is an employee of a local or central agency of the Church.

If the matter is dealt with under disciplinary procedures, then you may need specialised advice. This may be available from the Presbytery Clerk, or the Principal Clerk. Further details will be provided on an ongoing basis in this situation.

Disciplinary proceedings may ultimately lead to a censure being imposed on the respondent (*ie* the person who is

the subject of the complaint). In the case of a minister or deacon, this may consist of a reprimand, suspension for a fixed period or without limit of time, or removal of status as a minister or deacon. In the case of an office bearer, the Presbytery may decide to give an instruction regarding future conduct, issue a reprimand, remove the person from office or deprive them of status.

#### **A2: Referral to the Police**

In some circumstances, it may be appropriate to refer the matter to the Police, if the complainant has not already done so. This will be where criminal behaviour is alleged, in particular where there are allegations of a serious sexual nature, where vulnerable groups are involved or where allegedly there has been financial impropriety.

Anyone who becomes aware of offending of this nature is urged to contact the Police immediately.

Whether or not a minister, deacon or officer bearer of the Church is found guilty in a civil or criminal court of law, they may still be proceeded against under Church law. Where an investigation has already commenced under Church law but it then becomes apparent that the Police are involved, it would be normal for any internal Church investigation to be suspended until a Police investigation has been completed.

#### **B: Matter not to be taken further**

In some cases it might be determined at an early stage that the allegations do not require further consideration or investigation. A conversation with the Presbytery Clerk or other Presbytery official may well have been enough to allay your concerns or to establish that the matter does not require further investigation. However, normally the matter will be referred to the Church's Complaints Procedure.

#### **C: The Church's Complaints Procedure**

A matter which does not justify being referred to disciplinary procedures nor to the Police, and which has not been resolved at an early stage, will be referred to the Church's Complaints Procedure.

You can access further information about what is and what is not a complaint by clicking here *[Note: there will be a hyperlink here to a new web page in the web version]*. You can access information about making a complaint (the Church's four step Complaints Procedure) by clicking here *[Note: there will be a hyperlink here to a new web page in the web version]*.

*[New web page]*

### CHURCH OF SCOTLAND

#### What is and what is not a complaint?

##### Examples of complaints

A complaint might be:

- An allegation about the conduct of a minister, deacon or office bearer or about the way in which they have performed their duties
- An expression of dissatisfaction about the way in which you have been treated by a minister, deacon or office bearer or about their attitude to you
- An allegation that a minister, deacon or office bearer has failed to do something in the way that should reasonably be expected
- An allegation that there has been unreasonable delay by a minister, deacon or office bearer in responding to an enquiry or request
- A breach of confidentiality by a minister, deacon or office bearer

##### What is not a complaint?

A complaint is not:

- a routine request for information or for an explanation of the way in which something is done. In the first instance, such an enquiry should be referred to your local Church officers. However, the Presbytery Clerk (see below) is a person who you can contact should you simply wish an explanation of the way in which the Church normally does something.
- an allegation which is not about a person, ie it is about a court, Council or Committee of the Church. Such allegations will be dealt with under different Church procedures.

### What doesn't the Church's Complaints Procedure deal with?

The Church's Complaints Procedure is generally for allegations made against individual persons within the Church. Some things which the Church's Complaints Procedure doesn't cover are:

- An issue about selection or training of a minister: this goes to the Ministries Appeal Panel
- An issue about Presbytery planning (this is the Church's process for determining the extent and nature of congregations within the Church): this goes to the Appeals Committee of the Commission of Assembly
- An issue about insurance, sale or purchase of property: this would be dealt with by the Secretary of the General Trustees or his staff
- An issue about buildings maintenance: this would be dealt with by the appropriate local congregational body or Committee
- Insurance claims: these go to the insurance company
- An issue which involves a Church person but not a minister, deacon or office bearer *etc*: this will be referred straight to the local Kirk Session to be dealt with
- An attempt to reopen a previously concluded complaint or to have a complaint reconsidered where a final outcome has already been reached
- An issue which involves vulnerable people: this will go straight to Safeguarding procedures. For further information click here **[Note: there will be a hyperlink here to a new web page in the web version].**

Also, while you can complain about a matter which is already being dealt within the civil or criminal courts (such as the Sheriff Court, High Court of Justiciary, Court of Session or an employment tribunal), such a matter will not normally be dealt with by the Church until the civil or criminal process has been concluded.

Where the complaint should be dealt with under a different process, as mentioned above, the Presbytery Clerk will be able to supply you with the appropriate information about who to contact.

*[New web page]*

### CHURCH OF SCOTLAND Making a complaint

#### Step 1: Who to contact about a complaint

The Church is divided into geographical areas, known as Presbyteries. There are 43 of these in Scotland, plus Presbyteries for England, Jerusalem and the rest of the world.

Each Presbytery has its own Presbytery Clerk. That person can support and advise anyone thinking of making a complaint regarding a minister, deacon or officer bearer of the Church. To find the Presbytery Clerk for your local area, follow this link: *[presbytery clerk]*. **[Note: to cover the situation where the complaint is against the Presbytery Clerk, this list needs to incorporate alternative contacts within each Presbytery]**

You can email or telephone the Presbytery Clerk. Please always make initial contact with Presbytery Clerk in this way before following the more formal steps noted below.

If the person you want to complain about is the Presbytery Clerk, then please note that at the link above setting out contact details for each Presbytery Clerk, duplicate contacts are given in each case. In these circumstances you should contact the alternative person named for that Presbytery, who will be another Church official.

The Church hopes that wherever possible, initial discussion with the Presbytery Clerk (or other appropriate Church official) may well have been enough to allay your concerns or to establish that the matter does not require further investigation.

#### Step 2: Progressing a complaint – formal notification

If the matter is to be taken further, then the Presbytery Clerk must have some details from you in order for a complaint to be properly investigated. This means that you need to write to the Clerk, either in a letter or an email, setting out:

- who you are, plus your contact details,
- whether you are a Church member, or office bearer,
- exactly what the nature of your complaint is,
- exactly which persons – ministers, deacons or office bearers – you are complaining about, and
- specific details of the circumstances (including, where possible, names of individuals, places, dates *etc.*).

The Presbytery Clerk can assist you with this. Upon receipt of your written complaint, the Presbytery Clerk will acknowledge this in writing within 7 days.

All information which you supply in connection with your complaint will be treated sensitively. So far as is possible while still enabling your complaint to be properly dealt with, the information which you give will be treated confidentially.

### Step 3: Dealing with a complaint

On receipt of your written complaint, the Presbytery Clerk will send it to the Convener of the Presbytery's Complaints Committee. **[NB discussions suggested that (1) each Presbytery should have such a Committee but be given discretion on how to compose it and (2) also be encouraged to use existing Acts on Co-operation among Presbyteries if necessary. Committee would be a standing committee (for speed of action and development of expertise) comprised of three persons (at least 1 minister and 1 elder).]** A meeting of that Committee will then be called to consider the complaint.

Following the meeting of the Complaints Committee, one member of the Committee will contact you to discuss your complaint and if appropriate, to arrange to meet with you.

The Complaints Committee will also forward a copy of the complaint to the respondent (the subject of the complaint). The Committee may similarly meet with the respondent.

The Committee shall make such enquiries as it considers appropriate and may hold more than one meeting separately with you, the complainer, and with the

respondent. If it considers this to be appropriate and both parties consent, the Committee may facilitate a mediated meeting between you and the respondent.

On any occasion where the Committee meets with you, you are entitled to have present two other persons; where there is more than one meeting, these will ideally always be the same two persons.

On any occasion when the Committee meets with the respondent, the respondent shall be entitled to have present his or her pastoral adviser and one other person; again where there is more than one meeting, these will ideally always be the same two persons.

Summary notes will be kept of all meetings throughout the process.

The Committee will endeavour to provide you with an initial response on your complaint within a period of 20 working days from when it first considered the complaint.

### Step 4: The outcome

Upon completion of its enquiries, the Committee will hope to have achieved one of the following possible outcomes (although this list is not exhaustive):

- You as complainer are satisfied that the matters raised in the complaint have been resolved;
- You as complainer and the respondent have reached a mutual agreement that the matter need go no further;
- You as complainer and the respondent agree that the matter may be referred to mediation;
- The Committee will make a recommendation to Presbytery that the respondent be given an instruction or advice as to his or her future conduct,
- The complaint has been dropped or dismissed, or
- The complaint having been dealt with, the matter is, despite no agreement having been reached, nonetheless concluded.

The Procedure outlined above is subject to a right of procedural review. Further information about this will be given to you if it applies.

**APPENDIX H**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**PROCESSES ACT (ACT [ ] 2014)**

*Edinburgh, [ ] May 2014, Session [ ].*

The General Assembly enact and ordain as follows:

**1. Principles of this Act**

- (1) Subject to section 5(1) of this Act, the Church wishes to afford parties to a dispute (which shall include a case or appeal, before any Church court) the opportunity to resolve their differences through alternative dispute resolution processes ("ADR").
- (2) ADR may involve mediation, conciliation or facilitated conversation.
- (3) ADR will offer all parties to a dispute the opportunity to be heard, will encourage dialogue between the parties, and will provide the parties with time to explore the issues which have arisen between or amongst them, creating an opportunity for them to resolve their differences on a confidential basis.

**2. Initiation of ADR**

- (1) Subject to section 5(1) of this Act, it shall be the duty of each Presbytery, having regard to the wider interests of the Church, to consider whether ADR may be appropriate in the following circumstances:
  - (a) When a dispute first comes to the attention of a Presbytery, and
  - (b) When a dispute has just commenced under any Act or Regulation of the General Assembly.
- (2) If in such circumstances as are referred to in section 2(1) above, the Presbytery is of the view that the dispute is one where ADR might be employed, the Presbytery shall discuss with the parties what ADR may be available.

**3. Parties' agreement required**

- (1) ADR shall be used only where all parties to the dispute agree to using ADR. If any party does not wish to use ADR, the fact of their decision not to participate in ADR shall not be adversely referred to or used to their prejudice in any later proceedings before any Church court.
- (2) No material arising from ADR shall be used in any subsequent court proceedings.

**4. Effect of using ADR**

- (1) If the parties are agreed that ADR is to be used, this shall be done without prejudice to existing formal procedures for resolving disputes under any Act or Regulation of the General Assembly, but subject to section 4(2) below.
- (2) Where any case or appeal has formally commenced under any Act or Regulation of the General Assembly, and the parties have subsequently agreed that ADR shall be used, the Church court having jurisdiction over the case or appeal shall sist the matter while ADR is utilised, subject to the following conditions:
  - (a) Any such sist shall last for a maximum period of twelve weeks.
  - (b) If ADR does not result in an agreed disposal of the matter within such twelve week period, then the sist shall automatically be lifted subject to the Church court which imposed it having the power, prior to expiry of the said twelve week period, to extend the sist at its discretion. Any extension shall not result in the sist continuing for an aggregate period (comprising the initial twelve week period and all periods of extension) of longer than twenty six weeks.
  - (c) If ADR does result in an agreed disposal of the matter within such twelve week period (or any extended period(s) as provided for by paragraph (b) above), then the matter

shall return to the Church court having jurisdiction for disposal in accordance with such agreement.

#### 5. Use of ADR

- (1) ADR shall not be used where a matter is proceeding under any of the Acts listed in the Schedule to this Act.
- (2) ADR may be used where a matter is proceeding under any other Act or Regulation of the General Assembly, except where that Act or Regulation expressly excludes the applicability of this Act.

### SCHEDULE

Acts in respect of which ADR shall NOT be used

Act	Number and year
Congregations in Changed Circumstances	Act VI 1984
Readership	Act XVII 1992
Ministry	Act II 2000
New Charge Development	Act XIII 2000
Admission and Readmission of Ministers	Act IX 2002
Long Term Illness of Ministers	Act XV 2002
Appraisal and Adjustment	Act VII 2003
Auxiliary Ministry	Act XIII 2003
Selection and Training for Full Time Ministry	Act X 2004
Deacons	Act VIII 2010
Local Church Review	Act I 2011
Ordained Local Ministry	Act IX 2011

### APPENDIX I

#### PERSONS AND AGENCIES IN SCOTLAND FOR 2013

The membership statistics shown in the following tables may be stated thus:

	Removals by Death	10,648	
Less	Admissions by profession	1,485	9,163
	Removals by Certificate	3,026	
Less	Admissions by Certificate	2,256	770
	Other Removals	5,592	
Less	Restoration	1,777	3,815
	Total decrease		13,748

#### CONGREGATIONAL STATISTICAL RETURNS – YOUNG PEOPLE

Returns from Presbyteries showed:

- (1) that the number of children and young people aged 17 years and under who are involved in the life of congregations is 64,230.
- (2) that the number of people aged 18 years and over, whose names are not on the Communion Roll, but who are involved in the life of congregations is 15,666.
- (3) that the number of children who receive Holy Communion in terms of Act V, 2000, Section 15 is 3,154.

## APPENDIX J

### All Presbyteries – Congregational Statistical Return

PRESBYTERIES	On Roll as at 31st December 2012	COMMUNICANTS												On Roll as at 31st December 2013	+Inc or -Dec	Union +Inc/-Dec	Number of Notices of removal sent	Number on Supplementary Roll	OFFICE BEARERS				BAPTISMS			Weddings	Funerals
		REMOVALS				ADMISSIONS				Elders M	Elders F	Not Elders M	Not Elders F						No. During Year	Of Which Adults	Thanks-giving and Blessing Services						
		By Death	By Cert	Other-wise	To Union	By Profession	By Cert	By Restoration	New Union																		
Aberdeen	15,492	423	139	358	-	38	87	46	-	14,743	-749	-	93	1,097	607	650	61	154	127	7	6	147	964				
Abernethy	1,160	35	15	86	-	9	8	5	-	1,046	-114	-	9	100	53	54	15	33	13	1	-	24	93				
Angus	14,047	310	79	95	-	35	65	29	-	13,692	-355	-	27	1,110	337	430	50	97	117	5	9	75	618				
Annandale and Eskdale	5,245	144	25	74	-	17	20	19	-	5,058	-187	-	8	1,029	180	221	11	42	62	-	1	70	294				
Ardrossan	9,423	321	78	125	416	26	50	94	3	8,656	-767	-413	15	645	366	435	42	89	90	6	-	84	720				
Argyll	7,277	224	42	44	-	15	32	145	-	7,159	-118	-	35	839	409	389	84	181	128	7	3	131	508				
Ayr	19,985	425	96	78	-	54	65	50	-	19,555	-430	-	21	1,477	623	671	71	218	162	12	8	172	1,081				
Buchan	11,921	289	56	45	-	13	28	12	-	11,584	-337	-	10	1,257	359	338	77	203	59	10	11	67	439				
Caithness	1,321	4	1	-	-	-	-	2	-	1,318	-3	-	-	-	25	21	4	12	5	-	-	8	61				
Dumbarton	13,181	299	98	67	3	24	80	35	55	12,908	-273	52	42	1,029	571	659	72	153	167	6	10	221	665				
Dumfries and Kirkcudbright	9,902	245	50	112	791	19	49	52	527	9,351	-551	-264	11	1,425	324	304	54	136	127	2	1	116	409				
Dundee	12,949	355	87	184	-	67	50	37	-	12,477	-472	-	141	683	500	506	72	109	130	9	12	74	572				
Dunfermline	6,793	209	53	181	-	40	40	47	-	6,477	-316	-	28	1,622	302	348	23	56	77	8	10	83	531				
Dunkeld and Meikle	4,924	123	24	13	-	18	34	19	-	4,835	-89	-	3	396	189	167	18	40	77	1	2	105	231				
Duns	2,851	87	20	23	59	4	18	69	59	2,812	-39	-	8	246	108	119	30	41	43	1	18	35	156				
Edinburgh	27,698	803	410	603	396	122	220	175	396	26,399	-1,299	-	29	1,995	1,262	1,402	156	244	343	27	21	267	1,557				
England	2,168	36	9	45	-	7	19	4	-	2,108	-60	-	-	552	57	70	20	33	63	4	-	35	88				
Falkirk	13,359	384	88	265	-	60	54	45	-	12,781	-578	-	19	1,631	545	591	108	227	142	12	5	98	929				
Glasgow	36,018	985	322	534	471	270	194	158	471	34,799	-1,219	-	111	3,977	1,769	1,931	324	672	612	61	42	332	3,093				
Gordon	13,432	341	95	106	-	28	51	25	-	12,994	-438	-	18	1,529	367	413	31	87	130	3	11	78	559				
Greenock & Paisley	19,422	542	147	270	-	103	242	53	-	18,861	-561	-	18	2,366	931	946	142	236	245	30	13	146	1,366				
Hamilton	25,790	581	174	208	-	135	149	84	1,073	26,268	478	1,073	43	4,361	1,144	1,170	191	378	293	60	7	194	1,602				
Inverness	5,018	139	58	39	-	35	46	15	-	4,878	-140	-	5	533	298	186	67	109	76	11	1	78	331				
Invine and Kilmarnock	9,942	283	94	121	-	20	54	39	-	9,557	-385	-	7	1,899	416	445	79	163	101	5	12	61	655				
Jedburgh	6,280	166	24	36	-	11	14	7	-	6,086	-194	-	4	140	147	203	27	34	78	4	3	64	332				
Kincardine and Deeside	8,379	186	81	43	-	13	48	38	-	8,168	-211	-	8	989	208	231	15	30	62	3	4	96	341				
Kirkcaldy	8,441	277	44	83	364	33	33	40	364	8,143	-298	-	6	1,009	270	370	35	130	79	16	3	72	624				
Lanark	6,994	171	44	161	-	19	32	25	-	6,694	-300	-	16	1,045	233	241	43	80	58	3	8	36	382				

Lewis	1,024	16	3	24	-	16	10	3	-	1,010	-14	-	-	2	58	-	19	-	19	2	-	17	64	
Lochaber	1,172	28	9	15	-	-	6	5	-	1,131	-41	-	-	157	54	75	9	28	17	-	3	31	100	
Lochcarron – Skye	684	2	-	-	-	-	-	-	-	682	-2	-	-	48	5	2	2	5	1	-	-	2	6	
Lothian	14,797	396	98	352	-	29	70	37	-	14,087	-710	-	18	2,132	500	543	93	150	150	7	31	168	898	
Melrose and Peebles	6,516	180	22	45	-	8	16	27	-	6,320	-196	-	4	720	244	221	24	66	68	4	9	42	309	
Moray	8,704	237	48	415	-	17	39	23	-	8,083	-621	-	8	1,434	303	350	62	188	77	6	1	107	530	
Orkney	2,727	61	11	3	-	5	6	19	-	2,682	-45	-	-	47	58	72	21	51	4	-	-	11	89	
Perth	13,773	326	76	246	185	33	81	133	383	13,570	-203	198	16	1,205	440	466	36	42	129	8	7	100	530	
Ross	1,983	59	28	47	-	7	16	9	-	1,881	-102	-	15	42	117	94	33	89	31	4	1	28	223	
Shetland	1,376	30	6	-	-	2	-	-	-	1,342	-34	-	2	71	67	82	11	39	26	2	2	29	147	
St Andrews	8,700	252	50	107	-	30	53	25	-	8,399	-301	-	11	843	312	356	42	79	94	6	6	96	469	
Stirling	14,324	349	119	163	-	44	72	69	-	13,878	-446	-	31	1,454	554	574	81	190	121	10	10	119	696	
Sutherland	764	17	5	6	-	8	15	8	-	767	3	-	3	226	47	63	14	33	28	1	1	30	120	
Uist	488	6	16	4	-	3	5	2	-	472	-16	-	4	5	36	6	13	7	8	1	1	6	34	
West Lothian	9,150	211	50	64	-	45	58	40	-	8,968	-182	-	8	1,562	373	382	61	177	167	16	2	103	640	
Wigtown and Stranraer	5,313	91	32	102	-	3	27	8	584	5,710	397	584	1	466	130	139	22	80	58	2	1	21	178	
Totals	410,907	10,648	3,026	5,592	2,685	1,485	2,256	1,777	3,915	398,389	-12,518	1,230	856	45,395	15,898	16,936	2,465	5,211	4,664	383	296	3,879	24,234	



**All Presbyteries – Congregational Statistical Return  
On Roll as at 31st December 2013**

PRESBYTERIES	Number of Congregations	Children 17 and under	People 18+ Not on Roll	Children receiving Communion
Aberdeen	37	2,036	267	125
Abernethy	11	178	262	22
Angus	34	747	129	77
Annandale and Eskdale	20	689	105	39
Ardrossan	28	1,091	142	10
Argyll	58	634	286	5
Ayr	49	2,398	247	47
Buchan	36	1,388	129	21
Caithness	13	43	20	–
Dumbarton	34	1,505	387	55
Dumfries and Kirkcudbright	38	697	127	8
Dundee	35	1,559	243	63
Dunfermline	24	1,092	477	84
Dunkeld and Meikle	21	488	146	1
Duns	22	216	124	2
Edinburgh	81	4,462	981	441
England	9	76	52	21
Falkirk	36	2,738	221	153
Glasgow	138	11,996	2,011	592
Gordon	29	1,226	306	69
Greenock & Paisley	48	5,050	628	144
Hamilton	83	7,445	920	186
Inverness	25	1,200	972	40
Irvine and Kilmarnock	26	1,792	441	104
Jedburgh	16	604	94	38
Kincardine and Deeside	20	836	118	37
Kirkcaldy	26	780	129	115
Lanark	22	1,281	205	131
Lewis	11	264	676	7
Lochaber	15	186	145	–
Lochcarron - Skye	9	30	48	12
Lothian	47	1,524	511	142
Melrose and Peebles	22	631	277	38
Moray	30	640	374	73
Orkney	20	164	67	7
Perth	36	1,210	125	43
Ross	21	395	1,193	3
Shetland	14	174	122	–
St Andrews	29	382	98	13
Stirling	46	1,835	508	65
Sutherland	14	172	419	14
Uist	8	116	550	3
West Lothian	26	1,930	338	104
Wigtown and Stranraer	22	330	46	–
<b>Totals</b>	<b>1,389</b>	<b>64,230</b>	<b>15,666</b>	<b>3,154</b>

## COMPARATIVE STATISTICS FROM 2002 TO 2013

	2002	2003	2004	2005	2006	2007
Congregations	1,546	1,546	1,541	1,523	1,513	1,487
Communicants						
Removals by Death	14,217	14,136	13,465	13,084	12,557	12,478
Removals by Certificate	5,923	5,584	4,824	4,185	4,398	4,203
Removals otherwise	14,826	8,434	7,210	6,903	7,827	5,703
Total Removals	34,966	28,154	25,499	24,172	24,782	22,384
Admission on Profession	2,786	2,610	2,661	2,394	2,424	2,115
Admission by Certificate	10,556	4,550	3,962	3,507	3,572	3,354
Admission by Resolution	2,819	2,369	2,513	2,421	2,209	2,371
Total Admissions	16,161	9,529	9,136	8,322	8,205	7,840
Total on rolls	571,698	553,248	535,834	520,940	504,363	489,118
Elders	42,992	42,071	41,621	41,218	40,651	38,534
Baptisms	8,732	8,065	7,745	7,375	7,337	6,950
Total Population	5,054,800	5,057,400	*	5,094,800	5,116,900	5,144,200
Adult	4,034,236	4,049,158	*	4,035,773	4,130,913	4,161,258
Children at School Age	752,096	744,414	*	727,678	717,530	707,742
Children born	51,046	51,751	*	54,476	55,168	57,003
	2008	2009	2010	2011	2012	2013
Congregations	1,464	1,454	1,441	1,427	1,414	1,389
Communicants						
Removals by Death	11,826	11,218	11,454	10,488	11,156	10,648
Removals by Certificate	3,553	3,685	3,394	3,332	3,073	3,026
Removals Otherwise	5,995	5,763	6,096	5,821	7,047	5,592
Total Removals	21,374	20,666	20,944	19,641	21,276	19,266
Admissions by Profession	1,989	2,017	1,928	1,828	1,617	1,485
Admissions by Certificate	2,941	2,707	2,467	2,365	2,413	2,256
Admissions by Resolution	1,849	1,836	1,868	1,591	1,750	1,777
Total Admissions	6,779	6,560	6,263	5,784	5,780	5,518
Total on Rolls	471,894	464,355	445,646	432,343	413,488	398,389
Elders	36,360	36,215	36,519	34,572	34,138	32,834
Baptisms	6,154	6,198	5,787	5,452	5,147	4,664
* Total Population	5,168,500	5,194,000	5,222,100	5,254,800	5,313,600	Figures
Adult	4,189,133	4,151,853	4,184,261	4,218,391	4,398,929	Not
Children of School Age	696,395	678,163	680,325	676,013	680,291	Yet
Children born	59,531	59,673	59,395	59,826	58,691	Available

\* Calculation date changed during 2004.

**APPENDIX K**  
**STATISTICS ANENT MINISTRY**

<b>A. AT HOME</b>	<b>As at 31.12.08</b>		<b>As at 31.12.09</b>		<b>As at 31.12.10</b>		<b>As at 31.12.11</b>		<b>As at 31.12.12</b>		<b>As at 31.12.13</b>	
Number of Charges at December	1,160		1,149		1,134		1,109		1,101		1,068	
Number of Ministers serving charges	M 766 F 200	M 734 F 206	M 724 F 215	M 687 F 218	M 652 F 205	M 627 F 202						
<b>Total</b>	<b>966</b>		<b>940</b>		<b>939</b>		<b>905</b>		<b>857</b>		<b>829</b>	
Number of Guardianships	–		–		–		4		9		20	
Number of Vacant Charges	194		209		195		200		223		223	
<b>B. ABROAD</b>	<b>2008</b>		<b>2009</b>		<b>2010</b>		<b>2011</b>		<b>2012*</b>		<b>2013*</b>	
Number of Ordained Ministers	5		4		3		3		19		17	
Number of Vacancies for Ministers	4		1		0		0		0		4	
<b>C. STUDENTS COMPLETING COURSES</b>												
New College, Edinburgh	M 10 F 1	M 9 F 5	M 3 F 1	M 2 F 0	M 4 F 4	M 4 F 4						
Trinity College, Glasgow	M 4 F 4	M 0 F 2	M 2 F 3	M 2 F 0	M 3 F 2	M 4 F 1						
St Mary's College, St Andrews	M 1 F 1	M 0 F 0	M 0 F 1	M 0 F 1	M 2 F 2	M 0 F 0						
Christ's College, Aberdeen	M 1 F 1	M 1 F 1	M 1 F 2	M 1 F 0	M 0 F 2	M 0 F 0						
Highland Theological College, Dingwall	M 1 F 0	M 4 F 0	M 1 F 1	M 1 F 0	M 0 F 1	M 1 F 1						
<b>Total number completing</b>	<b>24</b>		<b>22</b>		<b>15</b>		<b>7</b>		<b>20</b>		<b>15</b>	

\* Figures include those in the Presbyteries of Europe and Jerusalem.

