

# LEGAL QUESTIONS COMMITTEE

May 2016

## PROPOSED DELIVERANCE

### The General Assembly:

1. Receive the Report.
2. Delete the existing Standing Orders 112.2, 112.6, 112.7 & 112.12 and substitute new Standing Orders in their place. (*Section 1 – Remits, Membership and Quora of General Assembly Councils and Committees and Appendix A*).
3. Insert a new Standing Order 112 and re-number subsequent Standing Orders accordingly. (*Section 1 – Remits, Membership and Quora of General Assembly Councils and Committees*).
4. Pass an Act amending the Vacancy Procedure Act (Act VIII 2003) as set out in Appendix B. (*Section 2 – Vacancy Procedure and Appendix B*).
5. Pass Acts Amending Act XVIII 1932, Act II 1994 and Act III 1994. (*Section 3 – Stated Annual Meetings and Appendices C, D & E*).
6. Approve the Registration of Ministries Overture as set out in Appendix F and transmit the same to Presbyteries under the Barrier Act, directing that returns be sent to the Principal Clerk by 31 December 2016. (*Section 4 – Registration of Ministries and Appendix F*).
7. Instruct the Committee, together with the Ministries Council, to review the Admission and Readmission of Ministers Act (Act IX 2002) in the light of the proposed Registration of Ministries Act and to report to the Assembly of 2017. (*Section 4 – Registration of Ministries*).
8. Instruct the Committee, together with the Ministries Council, to review the Ministry Act (Act II 2000) and the Church Courts Act (Act III 2000) in relation to membership of Presbytery and to report to the Assembly of 2017. (*Section 4 – Registration of Ministries*).
9. Commend to Presbyteries and Kirk Sessions the recommendations regarding consensus decision making as outlined in Section 5 of the Report. (*Section 5 – Consensus Decision Making*).
10. Encourage Church courts and members to provide feedback by 30 October 2016 in relation to the draft Discipline Overture when available on the Church website. (*Section 6 – Review of the Disciplinary Acts*).
11. Instruct that from 1 January 2017 the only form of constitution which congregations may adopt and which may be granted by the Delegation of the General Assembly shall be the Unitary Constitution and urge those congregations constituted in terms of the Model Deed and other forms of constitution to adopt the Unitary Constitution. (*Section 8 – Forms of Constitution and Trusteeship Issues*).
12. Instruct the Committee, in consultation with the Theological Forum, the Ministries Council and the Mission and Discipleship Council, to review the Vacancy Procedure Act (Act VIII 2003) with reference to the place, practical operation and inclusiveness of the congregational vote in our understanding of the right to call and to report to the General Assembly of 2018. (*Section 9 – Proxy Voting, Remote Attendance at Meetings and the Implications for Membership of “Online Attendance”*).
13. Instruct the Committee, in consultation with the Ministries Council and the Mission and Discipleship Council, to explore the opportunities and limitations of the use of remote means of access to church meetings, and where

possible bring forward amending legislation which would enable this practice to be used more widely and report to the General Assembly of 2018. (*Section 9 – Proxy Voting, Remote Attendance at Meetings and the Implications for Membership of “Online Attendance”*).

14. Instruct the Committee, jointly with the Mission and Discipleship Council and the Theological Forum, to research the implications for the Church of Scotland of the development of online church and report to the General Assembly of 2018. (*Section 9 – Proxy Voting, Remote Attendance at Meetings and the Implications for Membership of “Online Attendance”*).
15. Pass an Act amending the Co-operation between Presbyteries Act (Act VI 2002). (*Section 10 – Co-operation between Presbyteries & Appendix G*).
16. Amend Standing Order 35 (i) as set out in section 12 of the Report. (*Section 11 - Amendment of Standing Order 35 (i) - Youth Representatives*).

## REPORT

### 1. Amendments to Standing Orders – Remits, Membership and *Quora* of General Assembly Councils and Committees

1.1 In the Council of Assembly report, at section 13, there are proposals for changing the remits and membership of certain General Assembly Standing Committees: the Mission and Discipleship Council, the Church and Society Council, the Committee on Chaplains to HM Forces and the Ecumenical Relations Committee. The Committee notes that the changes to Standing Orders, if agreed, would be as set out in Appendix A.

1.2 It has also been drawn to the Committee’s attention that there is currently no *quorum* for General Assembly Councils and Committees. One of the principles of good governance is that every decision-making body should have a rule specifying the minimum number or proportion of members with the right to vote who require to be present at a meeting to make the proceedings and any decisions taken valid. It is also good practice that the number should be set out in the governing document or standing orders of the body concerned.

1.3 Within the Church of Scotland, a *quorum* is specified for a number of Church bodies, including the General Assembly (31, of whom at least 16 must be Ministers),

Presbyteries (3, of whom 2 at least must be Ministers) and Kirk Sessions (3, of whom 1 must be the Minister, Interim Moderator or other duly authorised Minister). Similarly, the Parliamentary or General Assembly legislation establishing them, specifies the *quorum* for meetings of the Commission of Assembly, Judicial Commission, the Church of Scotland General Trustees, Church of Scotland Trust and the Church of Scotland Investors Trust.

1.4 It is commonly assumed that the *quorum* for General Assembly Standing Committees (*ie* the unincorporated Councils and Committees) is 3 and indeed this is in practice often adopted. However, if this is correct, it is not specified in the General Assembly Standing Orders (which make provision for other matters pertaining to such bodies in Standing Orders 112-126) or elsewhere. This apparent omission is confirmed by Weatherhead’s Constitution and Laws of the Church of Scotland, Page 41:- “There is no provision of a *quorum* . . . for committees or for congregational meetings.”

1.5 The Committee has taken the view that a new Standing Order should be drawn up specifying a *quorum* for Councils and Committees. Looking to the precedent of Presbyteries and Kirk Sessions, a number of 3 (which would tie in with past practice) would seem appropriate.

Weatherhead comments that a small *quorum* enables courts to function effectively.

1.6 Practical problems may arise in regard to Councils and Committees which have constituted sub-committees and other groups. Whether a set *quorum* is required might depend on whether the “inferior” body has been granted delegated decision-making powers. In such a case, a *quorum* again of 3 would appear to be advisable whereas a body with no such powers might not require a formal *quorum*.

1.7 There would appear to be no need to specify the presence of a minimum number of Ministers given the varied composition and business undertaken by Assembly Councils and Committees.

1.8 The Committee therefore suggests that a new Standing Order 112 should be inserted as set out below, with subsequent Standing Orders being re-numbered accordingly:

*“112. Quorum. Save for the Judicial Proceedings Panel and those bodies where provision is already made for a quorum, the quorum of Standing Committees of the General Assembly listed in SO 113 shall be three. When a meeting ceases to be quorate, business must be suspended. The quorum shall apply also to sub-committees and other bodies constituted from the relevant Standing Committees where such sub-committees and other bodies have decision-making powers, but not otherwise.”*

## **2. Amendments to Vacancy Procedure Act (Act VIII 2003)**

2.1 In 2014 the General Assembly received the Report of the Special Commission anent Ministerial Tenure and the Leadership of the Local Congregation (“the Special Commission”). The Assembly subsequently approved its recommendations and instructed the Legal Questions Committee to work alongside other Councils and Committees to implement the proposals. As part of this

the Committee has been working with the Ministries Council to revise the Vacancy Procedure Act (Act VIII 2003).

2.2 The Report of the Special Commission emphasised the importance of understanding the context in which ministry and mission are being undertaken. In particular, it recognised that a parish profile can be a useful tool when articulating the distinctive identity and calling of a local church in a time of vacancy. A good parish profile can enable potential applicants to consider whether or not their personal gifts are an appropriate match for a particular charge. A parish profile can also guide the Nominating Committee, making it easier to consider applications in the light of the distinctive opportunities and challenges in the charge.

2.3 The General Assembly of 2014 therefore affirmed the necessity of taking a more integrated approach towards the vacancy process, including the parish profile. It instructed a revision of the Vacancy Procedure Act (Act VIII 2003), and the provision of resources and training to ensure that there is consistency of approach.

2.4 The proposed new section 32 specifies that a broader range of resources should now be provided, to provide support for those who are handling vacancy processes. In particular, the existing Guidelines for Interim Moderators and Nominating Committees will be supplemented by additional Guidelines for Kirk Sessions and Advisory Committees. These Guidelines will have been prepared by the time that the General Assembly meets and will be accessible via the Church website. It is intended that the Guidelines will help to ensure that there is greater consistency of approach.

2.5 The proposed new section 12 formally requires Kirk Sessions to prepare parish profiles according to a template that is provided within the Guidelines. It should be emphasised that this is not a ‘one size fits all’ approach; rather, the template ensures that the distinctive characteristics of a particular pastoral charge will be properly elicited and described. For this reason, the parish profile will include, as an appendix, the most recent

report(s) undertaken in accordance with Local Church Review.

**2.6** While proposing the above amendments to the Vacancy Procedure Act, the Committee has taken an opportunity to propose further minor adjustments, many of which simply bring the Act up to date. For example, allowance is made for the use of electronic communication, the existence of civil partnership is acknowledged and words have been adjusted where nomenclature has changed. An opportunity has also been taken to provide greater clarification in areas where queries have sometimes been raised. For example it would now be specifically stated that an individual may not be considered as an applicant for a vacant charge, while he or she is subject to proceedings under the Discipline of Ministry Act (Act III 2001). In recognition of the longer span of many vacancies, it is proposed that a right to call should now last for two years, rather than just one year. For data protection reasons, changes are proposed to the procedures through which individuals are able to confirm their inclusion on the Electoral Register: it will not now be possible for individuals to access the whole Register, but only to confirm their own inclusion on it. Finally, the schedules which specify the various intimations and edicts to be read have all been revised, with a view to ensuring that congregations are addressed in more accessible language.

### **3. Stated Annual Meetings**

**3.1** The General Assembly of 2015 instructed the Legal Questions Committee, in consultation with the Law Department and the Stewardship and Finance Department, *"to consider the purpose and timing of a congregation's Stated Annual Meeting and report to the General Assembly of 2016."*

**3.2** It is required of all congregations of the Church of Scotland to hold an Annual Meeting of the congregation prior to 31 March to receive the submission by the Financial Board of the Accounts (Act III 1994 as amended and Regulations II 2012).

**3.3** Depending on the particular constitution of a congregation, there may be additional reasons for holding an annual meeting. For example, the election by the congregation of members to serve on the Congregational Board (Act II 1994 as amended).

**3.4** There are considerable opportunities afforded by the holding of an annual meeting, such as the celebrating of milestones in the congregation's life, the raising of awareness about such issues as stewardship, and the consideration of particular challenges facing the congregation. The Committee is of the view that such meetings should continue to be held. The annual meeting might also provide an opportunity for questions on the Trustees' annual report, as occurs with other bodies in the charitable sector, in addition to allowing wider reflection and the development or discussion of the kind of action plan involved in Local Church Review procedures, perhaps in the context of a congregational lunch or other social occasion.

**3.5** It is recognised that it can prove difficult in certain circumstances, particularly in multiple linkages, for congregations to hold their annual meeting by 31 March. For the purposes of good governance and onward transmission to the Stewardship and Finance Department and to the Office of the Scottish Charity Regulator, it is still important for Trustees to submit their accounts to Presbytery by that date for attestation, but there is no reason why the accounts need to be received by the congregation prior to them being submitted to Presbytery.

**3.6** It is therefore proposed that the deadline for holding an Annual Meeting be amended to 30 June. In addition to the statutory receiving of accounts and the fulfilment of any other particular requirements of the congregation's constitution, congregations should be encouraged to develop an imaginative approach to the holding of their annual meeting. At the annual attestation of congregational records, Presbyteries should check that an Annual Meeting has been held within the last year.

3.7 Consequential amendments are required to legislation, and the appropriate draft amending Acts are attached in Appendices C, D and E. Amendments are also required to the Congregational Finance Regulations and these are included in amended Congregational Finance Regulations presented by the Council of Assembly, at paragraphs 1.(D)(1)(2) & (3). The report of the Council of Assembly explains why other changes are being made to these Regulations, and the Regulations will be considered overall during the Council of Assembly report.

## 4. Registration of Ministries

### 4.1 Background

4.1.1 The General Assembly of 2013 instructed the Legal Questions Committee, in consultation with the Ministries Council, to conduct a comprehensive review of the provisions of Act II 2000 in relation to ministerial Practising Certificates, with a view to bringing a report and amending legislation to the General Assembly of 2014. The Legal Questions Committee had reported that there was confusion as to how Practising Certificates were being managed and who should be allowed to hold them. The Committee indicated its desire to make the law clearer and more straightforward to operate.

4.1.2 In the event, the General Assembly of 2014 instructed the Committee and the Ministries Council to continue their work. It was recognised that the review needed to go beyond the immediate administrative issues which had initially been identified, in the light of recommendations that were being made by the Special Commission anent Ministerial Tenure and the Leadership of the Local Congregation ("The Special Commission"). The General Assembly subsequently approved the proposals of The Special Commission, in particular instructing the delivery of a 'Capability Procedure', to address issues of professional capability which arise amongst inducted ministers. In so doing the General Assembly acknowledged that specific competencies are required from those who hold office as parish ministers.

4.1.3 The Capability Procedure is still being developed and will be presented to a future meeting of the General Assembly. However, it will be helped by the adoption of a more comprehensive system of registration. A peculiar feature of the current system of Practising Certificates is that it primarily applies to those who are not actually practising ministry on a regular basis. For example, Practising Certificates are mainly held by retired ministers who undertake occasional pulpit supply. At present there is no form of reviewable certification which extends to those who are actively engaged in ministry, for example those who serve as Parish Ministers, or as Ordained Local Ministers in designated appointments.

### 4.2 The Registration of Ministries Overture

4.2.1 The Registration of Ministries Overture proposes the creation of a single Register of Ministry ("the Register"), which will record details of all individuals who hold status as Ministers of Word and Sacrament, or as Deacons, within the Church. This unified approach will help to overcome the administrative confusion which was reported to the Assembly three years ago.

4.2.2 Inclusion on the Register will affirm the ordination and status of all individuals concerned, regardless of whether they are currently serving in appointments as Ministers of Word and Sacrament, or as Deacons. The Register will further specify the particular form of ministry to which each individual has been ordained, for example distinguishing clearly between the three different forms of Ministry of Word and Sacrament.

4.2.3 The Register will clearly state the particular Presbytery to which each individual is accountable. This will affirm the role that Presbyteries have in providing both pastoral and disciplinary oversight, even when individuals are no longer serving in Church appointments. At present Presbyterial oversight sometimes becomes unclear, particularly if individuals have moved to work in other spheres, while also retaining status within the Church.

4.2.4 Through a system of categorisation, the Register will also specify the context in which an individual is

currently authorised to perform the functions of the ministry or of the diaconate. The various categories are designated by a system of 'lettering', which deliberately avoids any implication of hierarchy. In a general sense, 'Category O' registration recognises that an individual is qualified to perform the functions of ministry as an officeholder and/or to hold appointments which are primarily governed by Church Law. 'Category E' registration authorises an individual to perform the functions of ministry, or of the diaconate, within or beyond the Church, in positions governed by employment law. 'Category R' registration authorises individuals, such as those who are retired, to perform the functions of ministry on an occasional basis. 'Category I' registration recognises the status of individuals who are no longer active in performing the relevant functions. 'Category L' registration caters for Ministers who have demitted their charges with Legally Binding Agreements being put in place, as currently specified in the Ministry Act (Act II 2000), acknowledging that such Ministers may only undertake the functions of ministry, on a limited basis, as specified in their particular Agreements. 'Category S' registration caters for individuals who have been suspended judicially as a consequence of disciplinary proceedings and who are thus not currently authorised to perform the functions of the ministry, or of the diaconate.

**4.2.5** In the first instance each Presbytery shall be responsible for compiling its own section of the Register, allocating individuals within its jurisdiction to the relevant categories. In the event of Presbytery office-bearers being uncertain about the process of categorisation, advice can be sought from the Principal Clerk's office.

**4.2.6** The most significant proposals contained in the Overture are being made in relation to Category O registration. Ministers of Word and Sacrament who continue to hold appointments requiring Category O registration (for example pastoral charges, or designated OLM appointments) would be unaffected. However, in moving towards a capability-based approach, such individuals would not remain indefinitely qualified to take

up appointments in the event of not actually holding such posts. In particular, an individual who left such an appointment for reasons of ill health would lose his/her Category O registration. An individual demitting on other grounds would normally be entitled to retain Category O registration for up to three years, but thereafter such registration would lapse. This is an essential aspect of the current proposal, which recognises that a degree of fitness and competency are required from those who serve in relevant appointments. In such cases, where the provisions of employment law do not apply, adequate provision needs to be made in Church Law.

**4.2.7** The Overture proposes the establishment of a Registration of Ministries Committee, which would receive applications from individuals applying for certain Categories of registration. Most notably, this would cover applications from individuals in other categories on the Register, who were seeking Category O registration. Such applications would be assessed in terms of the Criteria for Assessment which are listed in Schedule 2 of the Act. The Registration of Ministries Committee would determine what, if any, programme of mentoring, familiarisation, further education or training the applicant should be required to undergo. This process includes some flexibility and the Registration of Ministries Committee is able to determine that some aspects of the programme can be completed after Category O registration had been granted. Furthermore, a consequential amendment to the Vacancy Procedure Act (Act VIII 2003), would allow a Minister to apply for vacant charges, subject to having submitted a live application for Category O registration to the Registration of Ministries Committee. However, in relation to this, a Presbytery would not be able to sustain a call until such Category O registration had actually been granted.

**4.2.8** In practice it could be anticipated that an applicant for Category O registration who had been away from a relevant appointment for little more than three years would be unlikely to require much in the way of 'updating'. Similarly it could be anticipated that an individual who

had been away from a relevant appointment for over ten years would be likely to need more 'updating'. However, assessment for Category O registration will always take account of any relevant experience which may have been gained, for example while working in other appointments. Regardless of an applicant's experience, the Registration of Ministries Committee would always be entitled to seek and take account of an occupational health report.

**4.2.9** In practice, there will often be much that ministers can do to keep themselves up to date, if they wish to do so, in ways that would later facilitate an application for Category O registration. For example, a Health Care Chaplain would most likely be registered in Category E and be directly employed by a Health Care Trust. However, he or she can still worship in a local Church of Scotland congregation, participate in the life of a Presbytery and its committees, undertake pulpit supply and perhaps serve as an Interim Moderator. Such experiences could go a long way towards keeping an individual up to date and could count significantly towards an application for Category O registration. The Overture acknowledges, however, that regular Chaplains to Her Majesty's Forces might be disadvantaged in this regard. Due to the nature of their deployment, often furth of Scotland, it can be less straightforward for Forces Chaplains to participate in congregations and in Church Courts. Most such Chaplains leave the forces before state pension age and some may then wish to obtain Category O registration in order to serve in pastoral charges. The Overture therefore proposes that specific provisions should be made for Forces Chaplains, with the Ministries Council having input into their annual conference with a view to helping such individuals to keep up to date.

**4.2.10** It is proposed that the Registration of Ministries Committee should have a further role, considering applications for a change of registration from individuals who have been judicially suspended as a consequence of disciplinary procedures. The Registration of Ministries Committee would assess such applications in accordance

with section 26 of the Overture and also paragraph 2 of the Criteria for Assessment outlined in Schedule 2.

### **4.3 Summary and Conclusion**

**4.3.1** This Overture is being proposed in recognition of the duty of care which the Church has both towards congregations and towards the individuals who serve in ministry. It seeks to ensure that those who work in such appointments are adequately equipped before they commence their work. The intention of the Overture is not to make it harder for individuals to enter pastoral charges and other similar appointments. Rather, the intention is to help such individuals to undertake the work that they do.

**4.3.2** The Overture supports the principle of office-holding which was affirmed in the 2014 Report of the Special Commission. It endeavours to ensure that standards can be properly set for those who engage in ministry, under the Church's own jurisdiction, where the provisions of employment law do not apply.

**4.3.3** The Registration of Ministries Overture may seem to be a lengthy piece of legislation, but in practice it will result in other legislation being repealed. Out of necessity this proposed new legislation interacts with a large number of other Acts of Assembly. In recognition of this, potential amendments have been summarised in tabulated form.

**4.3.4** The Committee recognises that the proposed remit of the Registration of Ministries Committee is not entirely dissimilar from work that is being undertaken through Admission and Readmission procedures. Furthermore, the current system of Practising Certificates is closely inter-related with issues of Presbytery membership. The Committee therefore seeks authorisation, together with the Ministries Council, to review the relevant aspects of the Admission and Readmission of Ministers Act (Act IX 2002) and the Church Courts Act (Act II 2000).

## **5. Consensus Decision Making**

**5.1** Following consideration of the Report of the Panel on Review and Reform, the Assembly of 2015 encouraged

Presbyteries and Kirk Sessions to consider using consensus decision making, and invited Presbyteries to review their Standing Orders to allow consensus decision making to take place as and when appropriate. The Legal Questions Committee was instructed to consider how this might be achieved to result in effective and clear decisions and to bring forward recommendations to a future General Assembly.

**5.2** The Committee began its consideration of this matter by recognising that there are a number of different ways in which a group can take a decision. These can range from simple majority voting to a need for unanimity, where one member of the group can veto a proposal by others.

**5.3** Decisions taken by groups will also differ in their character, an observation applicable to matters determined by Presbyteries and Kirk Sessions. There can be decisions of a judicial nature, and decisions which are about the future direction of the body. Some decisions may have features of both.

**5.4** Consensus decision making represents an approach which goes beyond the use of majority voting. It is reasonable to expect that it will secure a greater degree of agreement with the decision reached, and a greater degree of acceptance of the result from those with reservations. These factors are most relevant where the decision is entirely concerned with the future direction of the body concerned. In that situation, and where the issue is one which generates strongly held views, church bodies may be able to manage the decision-making process simply by deferring the final decision until after more discussion and reflection have taken place. Illustrations of this in recent years are not hard to identify. The Church as a whole also retains the Barrier Act, a longstanding protection against abrupt and ill-considered change.

**5.5** Even after decisions of this nature have been taken, some of those who participated in the process may struggle with the outcome. It is important that magnanimity is displayed by people whose view has prevailed. Depending on the subject-matter, it may be

possible to introduce mitigatory measures, making it easier for those who have been unsuccessful to live with the result.

**5.6** The Committee also requires to point out, however, that where decisions are of a judicial character (and such decisions may directly affect the rights of individuals) different considerations come into play. The decision-maker is likely to be an outsider to the specific decision; indeed if a member of the decision making body were to have a connection to the subject-matter of the issue, they would probably not be involved in the decision. Thus, in the Courts of the Church, in a case or an appeal, the decision is generally taken by simple majority. Clarity of process and result is necessary; the procedure is likely to be prescribed in the law and practice of the Church. An accurate minute will be required. Those who were in the minority may have their position recorded in voting figures but issues about how they live with the result should not arise. Indeed, the use of consensus decision making may be neither necessary nor appropriate in such situations, and the Committee would be concerned were it to be adopted.

## **6. Review of the Disciplinary Acts – a consolidating/cohering Act**

**6.1** The Assembly of 2014 instructed the Committee as follows:

*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.*

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

**6.3** The Committee established a Working Group, from amongst its members, to undertake this project. It had been hoped to bring the results of this work to the General Assembly this year, in a new Discipline Act, but the scale of the task and the importance of wide consultation to this process, have meant that this ambition has, regrettably, not been realised.

**6.4** Those consulted include the Presbytery Clerks' Forum and the Judicial Proceedings Panel, both representing those stakeholders who will be required to implement any new legislation. Consultations have also taken place with congregations which have been affected by the operation of the Church's disciplinary processes. We are most grateful to all who have contributed to our work. The Committee believes that the outcome of this work will be much the better for this wide input.

**6.5** Whilst the Committee is not able to bring new legislation to this year's Assembly, the Working Group intends to place a draft Discipline Act upon the website as soon as possible for further discussion and input from members and stakeholders. The intention is to request comments until 30 October 2016, in order that the following months can be used to complete a fully-formed legislative proposal to be put before the General Assembly of 2017.

**6.6** The draft Act will not only consolidate the current four Acts, but will also take the opportunity to reform and update our disciplinary processes, including those of the Presbyterian Commission (who will, it is proposed, have the obligation to see the effects of any disposal of a case, which they decide, through to a conclusion): all focussed on the clear goal of significantly reducing the time taken to complete disciplinary cases. It is clear from our consultations with those congregations which have witnessed the Church's present disciplinary processes, at first hand, that there is often an enormous personal cost involved, which is not improved by the length of time taken to conclude a case. Thus the consultations with these congregations (which have often involved

individuals reliving times which, understandably, they want to put behind them), have had a particular impact on the Working Group's determination in this regard.

**6.7** At the outset of this project, the original intention was to retain the Protection against Discrimination Act. Further work on the particular area of Discrimination, as a disciplinary offence, has shown that it is, in fact, possible (and clearly desirable) to proceed with the original intention of producing a single Act of Assembly, comprehensively, covering the discipline of ministers, elders, readers and office bearers, including cases of bullying and discrimination and legislating for a single disciplinary procedure for all Respondents. The draft Act will attempt to do all of this – but it will be, we must emphasise, very much a work-in-progress and will by no means be the finished article.

**6.8** Whilst the Committee looks forward to the outcome of the website consultation, we are particularly keen to have the views of stakeholders and other consultees on

- The scope and number of disciplinary offences. Have we covered all potential offences in a manner fit for a modern disciplinary code?

And:

- The proposed new formulation of Censures in the present legislation. Again, is their scope sufficient and appropriate to a twenty first century disciplinary process?

**6.9** The Committee's firm intention is to bring a new Discipline Act, together with completed Guidelines for its implementation and Regulations covering legal assistance in disciplinary proceedings, to the General Assembly in 2017. Whilst any new Discipline Act will require to be sent to Presbyteries under Barrier Act procedure, given the wide consultation on its development over the last two years, the continuing website consultation and the clear and pressing need for new legislation to speed up the Church's disciplinary processes, the Committee would

intend to propose to next year's Assembly that an Interim Act be passed in order that the beneficial effects of the new legislation may be felt throughout the Church at the earliest opportunity.

## **7. Consultation on civil partnership**

7.1 Between September and December 2015, the Scottish Government embarked on a consultation on the future of civil partnership in Scotland. Three options were being considered: no change to the current legislation, so that civil partnership would remain available for same sex couples only; stopping new civil partnerships from being registered at some date in the future; introducing opposite sex civil partnership in Scotland.

7.2 The Church of Scotland was invited to make a submission, as one of the bodies which had previously participated in the consultation on same sex marriage. The matter was therefore considered by the Legal Questions Committee, which had represented the Church in the earlier discussions. As part of this, along with representatives of other denominations, the Convener, Principal Clerk and Solicitor took part in a round table discussion with Simon Stockwell, the Head of Family and Property Law in the Scottish Government.

7.3 The Legal Questions Committee subsequently submitted a short response to the consultation in favour of retaining the *status quo*. The Committee commented that, as a matter of conscience, some same sex couples may not wish to be married, but may nevertheless desire to enter into civil partnership. The Committee also expressed a view that, following the introduction of same sex marriage, more time should be taken to assess the continuing demand for civil partnership before deciding on further legislative changes.

## **8. Forms of Constitution and Trusteeship Issues**

8.1 At present, congregations seeking to change constitution or at the time of a union have the option of adopting either the Model Deed or the Unitary form.

Where the Unitary Constitution has been adopted, the Kirk Session is the sole decision making body although many Kirk Sessions set up Committees to which much work can be delegated and to which members with special skills who are not elders can be appointed. With the Model Deed, there is a division of responsibility between the Kirk Session which deals with spiritual matters and the Congregational Board which looks after temporal matters and, in particular, property and finance.

8.2 The passing of the Charities and Trustee Investment (Scotland) Act 2005 has brought into sharp relief the tension of operating with a Congregational Board. The resulting division of responsibilities does not sit easily with the obligations of the congregation's Charity Trustees, namely the members of both the Session and Board. Since Charity Trustees are equally responsible for all decisions relating to the charity, Session members who are not members of the Board are liable for decisions to which they were not party and *vice versa* in the case of Board members. Since the Congregational Accounts have to be considered and approved by the whole trustee body, a joint meeting of the Session and Board requires to be held. The Committee is also aware that in some congregations, it is becoming difficult to persuade suitably qualified members to stand for election to the Board. Inevitably also, some issues do not fall neatly into either the spiritual or temporal category and there can be a tendency for such matters to be discussed twice.

8.3 In recent years, the Unitary Constitution has proved by far the most popular. During the period from its introduction in 2004 to 31 December 2015, 501 congregations have adopted the Unitary form as compared to 96 Model Deeds issued during the same period. Feedback from congregations operating on the Unitary form has been almost unanimously to the effect that the new arrangements work well and represent a considerable improvement in their governance arrangements.

**8.4** Given the clear advantages in regard to charity law compliance and in the interests of good governance, the Committee considers that the time has come to require that congregations changing their constitutions should adopt the Unitary Constitution. It is therefore proposed that henceforth the Unitary Constitution would be the only form which might be selected and which would be the default form following upon a union. Congregations which are otherwise constituted should be encouraged to change to the Unitary form. If approved, this proposal will mean that, over time, the Church will move to a situation where all congregations are operating on the same form of constitution, an outcome which the Committee considers would be very desirable. To allow for any unions still to take place where congregations have already agreed that the united congregation will be constituted in terms of the Model Deed, it is suggested that the prohibition on new Model Deeds should be effective from 1 January 2017.

## **9. Proxy Voting, Remote Attendance at Meetings and the Implications for Membership of “Online Attendance”**

**9.1** Over the years the Legal Questions Committee has often been asked to comment on the historic practice of the Church which grants only those who are physically present, at properly constituted meetings, the right to vote. The Committee hitherto has held to the view that proxy voting or forms of referendum or plebiscite are not part of our Presbyterian polity. In the past year, however, this view has been challenged more robustly by a number of Kirk Sessions concerned at the way in which this policy operates in relation to the Vacancy Procedure Act, Act VIII 2003. They believe that this policy disenfranchises a great number of church members who are housebound or who for other reasons are not able to be present when the nominee preaches before the congregation. They have also noted that more and more members are able to “attend” by way of the live streaming of worship and they have pointed out that there are now reliable ways in which a vote could be cast remotely or by a proxy.

**9.2** In other areas of Church life there is now a quiet acceptance that it is possible to participate fully in the meeting of a Committee, a Council, or a Court by way of remote access. The Church Offices have been fitted out with the high tech equipment which makes this possible and this move has been welcomed as being in line with the green energy policies which the Assembly has been encouraging over many years.

**9.3** Even wider questions about membership and belonging are now being asked by congregations whose services, through the internet, are being carried well beyond their parish boundaries. We are living in an age when some of the old rules are fast becoming redundant and, as a result, the Legal Questions Committee believes that it is time for the Church to undertake a wide ranging review of practice and procedure which is impacted by the use of new technology in church life.

**9.4** While this matter has been raised most specifically in relation to the voting arrangements in the Vacancy Procedure Act, Act VIII 2003, the Committee believes that it is time to look more carefully at the definitions of membership and adherence and to consider more generally the whole process of the settlement of ministers. With this in mind the Committee proposes that, in consultation with the Theological Forum, the Ministries Council and the Mission and Discipleship Council, a thorough review of Act VIII 2003 should be carried out. The scope of this work is such that it would require to be done over a period of two years, which would also allow for a process of consultation with those in Presbyteries who have to operate the Act.

**9.5** Further, the Committee, while welcoming the gradual development of the use of remote means of access to church meetings, believes that it is time to explore more fully the opportunities and limitations of technology in this regard. The Committee can imagine the use of technology such as Skype and FaceTime as a means by which more remote congregations could be served by an Interim Moderator or visited by Presbytery without the

need for many hours and miles of travel. Alongside these developments growing naturally within the Church, the Committee believes that it would be helpful if it brought forward a report which enabled these things to happen within reasonable bounds. The Committee would, in consultation with the Ministries Council and the Mission and Discipleship Council, seek to clarify what is possible and bring forward any amending legislation which may be necessary to allow these developments to take root in our practice.

**9.6** Finally, and looking further into the future, the Committee is aware that the nature of membership and belonging to the Church of Scotland is becoming more and more blurred. As fewer people join up in the traditional sense and as they make choices which include ever greater interaction with the Church through online access and social media, questions arise about online membership and even about access to the sacraments while not being physically present in the congregation. There are no easy answers to some of the questions which are already being asked, but, in a world where the fastest growing communities are being fostered online, the Committee believes that now is the time to open up a wide ranging discussion on these contemporary developments. The Committee proposes that this research be done jointly with the Mission and Discipleship Council and the Theological Forum.

## **10. Co-operation between Presbyteries**

**10.1** In recent years a number of Presbyteries have found it necessary to use the Co-operation between Presbyteries Act, Act VI 2002, to invite members of a neighbouring Presbytery to assist them in carrying out a variety of pieces of work as specified in the Act. A limiting feature of the Act, however, is that Presbyteries may only call upon a Presbytery with a contiguous border to assist them with what is sometimes sensitive work. This works for Presbyteries which are bound by several other Presbyteries but it limits the scope of available help for Presbyteries which are more isolated.

**10.2** In order to overcome this difficulty and to allow greater flexibility, the Legal Questions Committee is proposing a minor amendment to the Act dropping the need to involve only a neighbouring Presbytery and allowing Presbyteries to seek help from any other Presbytery. The proposed amendment is to be found in Appendix G.

## **11. Amendment of Standing Order 35 (i) - Youth Representatives**

**11.1** Prompted by a discussion between the Assembly Arrangements Committee and the Mission and Discipleship Council, the Legal Questions Committee has been asked to bring forward a minor change to the Standing Order which defines the eligibility of an individual to attend the General Assembly as a Youth Representative. The effect of this change would be to ensure that no young person is excluded from serving as a Youth Representative because education or work means that they spend the balance of their life away from the locus of their home congregation.

**11.2** It is therefore proposed that Standing Order 35(i) be altered to read:

*35. Status*

*(i) One person between the ages of eighteen and twenty-five on the opening day of the General Assembly shall, if possible, be appointed by each Presbytery to serve as a Youth Representative; each Representative shall be involved in the life of a congregation within the bounds of the Presbytery and be regularly involved in the life and worship of the Church of Scotland. The minister of the congregation shall provide confirmation of this involvement if asked by the Mission and Discipleship Council.*

## **12. 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*

GEORGE S COWIE, *Convener*  
ALISTAIR S MAY, *Vice-Convener*  
JOHN P CHALMERS, *Secretary*

**APPENDIX A**

**PROPOSED RESTATED STANDING ORDERS AS TO REMITS AND MEMBERSHIP OF CERTAIN COMMITTEES AND COUNCILS OF THE GENERAL ASSEMBLY**

Standing Order 112.2  
Church and Society ..... 32  
Convener, 2 Vice-Conveners, 27 members appointed by the General Assembly, one of whom will also be appointed to the Ecumenical Relations Committee, and one member appointed from and by the Social Care Council and the Guild. The Nomination Committee will ensure that the Council membership contains at least 5 individuals with specific expertise in each of the areas of Education, Societal/Political, Science and Technology and Social/Ethical. This number may include the Convener and Vice-Conveners of the Council.

Standing Order 112.6  
Committee on Chaplains to HM Forces ..... 18  
Convener, Vice-Convener and 16 members appointed by the General Assembly.

There are also 2 non-voting members: one representative from and appointed by each of the Ministries and the Church and Society Councils.

Standing Order 112.7  
Mission and Discipleship ..... 33  
Convener, 3 Vice-Conveners and 25 members appointed by the General Assembly, one of whom will also be appointed to the Ecumenical Relations Committee, the Head of Stewardship, 1 member appointed from and by

the Guild and the Go For It Committee, and the Convener or Vice-Convener of the Committee on Church Art and Architecture as that Committee shall determine. The Nomination Committee will ensure that the Council membership includes at least 3 individuals with specific expertise in each of the areas of Congregational Learning, Church Without Walls and Resourcing Worship.

Standing Order 112.12

Ecumenical Relations ..... 12 plus co-optees

- (a) 6 members appointed by the General Assembly, each to serve as a member of one of the 5 Councils of the Church and the Theological Forum.
- (b) Convener who is not a member of any of the other Councils and who will act as a personal support for the Ecumenical Officer (EO) and Vice-Convener, appointed by the General Assembly.
- (c) A representative of the Roman Catholic Church in Scotland appointed by the Bishops' Conference and 1 representative from each of 3 churches drawn from among the member churches of ACTS and the Baptist Union of Scotland, each to serve for a period of 4 years.
- (d) The Committee shall co-opt Church of Scotland members elected to the central bodies of Churches Together in Britain and Ireland (CTBI), the Conference of European Churches (CEC), the World Council of Churches (WCC), the World Communion of Reformed Churches (WCRC) and the Community of Protestant Churches in Europe (CPCE, formerly the Leuenberg Fellowship of Churches).
- (e) The General Secretary of ACTS shall be invited to attend as a corresponding member.
- (f) For the avoidance of doubt, while, for reasons of corporate governance, only Church of Scotland members of the Committee shall be entitled to vote, before any vote is taken the views of members representing other churches shall be ascertained.

## APPENDIX B

### AMENDMENTS TO VACANCY PROCEDURE ACT

#### ACT AMENDING THE VACANCY PROCEDURE ACT (ACT VIII 2003)

*Edinburgh, [ ] May 2016, Session [ ]*

The General Assembly hereby enact and ordain that the Vacancy Procedure Act (Act VIII 2003), as amended, shall be further amended as follows:

1. *In section 1(2) amend sub-section (b) to read "exclude any communicant member, the current or any former minister, or any person having, in the Presbytery's opinion, a significant personal connection to the ministry or a former ministry of the vacant charge or of any constituent congregation thereof".*
2. *In section 1(4), delete the words "provided that reasonable efforts are made to consult all members of the Committee" and substitute "and may do so by electronic means."*
3. *In section 2(1) after the word "by mailing", insert the words "by electronic means"*
4. *Insert a new section 12 as follows and re-number subsequent sections accordingly:*

#### **"12. Profiling**

Subject to the right to call having first been granted, the Kirk Session(s) shall prepare a profile of each congregation and parish within the charge, in accordance with the template published in the Guidelines for Kirk Sessions. In the case of a linked charge, this shall take the form of a single document, with separate sections for each constituent congregation. In all cases the profile shall contain, as an appendix, a copy of the most recent report on each constituent congregation produced in accordance with the Local Church Review Act (Act

1 2011). The draft profile(s) shall then be submitted to the Advisory Committee, prior to its meeting with the Kirk Session(s) (Section 13(2)(a)), for possible comment and revision."

5. *In section 12(2)(a), insert a new sub-section (ii) as follows and re-number the existing sub-section (iii) accordingly:*

"(ii) the finalising of the profile which has been prepared in accordance with Section 12,"
6. *Delete section 12(2)(c).*
7. *Add the following sentence at the end of section 12(2): "The Advisory Committee may continue its work in the absence of one member, subject to the agreement of both remaining members."*
8. *Add a new section 12(3) as follows:*

"(3) Before the Nominating Committee reports the identity of the nominee to the Kirk Session and Presbytery, it shall report the process followed to the Advisory Committee (by electronic means if desired) who shall give any further advice it deems necessary."
9. *In section 13(1)(1)(a), delete the words "and who are not under church discipline".*
10. *In the second sentence of section 13(1), delete the words "parishioners or".*
11. *In section 13(2) after the third sentence, add the following sentence: "For the avoidance of doubt, the names of individuals who are not contactable and whose address is unknown shall not be entered on the Electoral Register."*
12. *Amend the first sentence of section 13(3) to read "The proposed Electoral Register having been prepared, the Interim Moderator shall cause intimation to be made on the first convenient Sunday*

in terms of Schedule E hereto that any person who believes they are eligible to be included in the Electoral Register may inquire as to whether their name has been included, and the provisions which the Kirk Session has made for such inquiry, and further shall specify a day when the Kirk Session will meet to hear further requests for inclusion in the Register and will finally revise and adjust the Register.”

13. *Amend section 13(6) to read:*

“At any time after a period of six months has elapsed since the Electoral Register being attested, but before the name of a nominee is reported to the Kirk Session, the Kirk Session shall have power, if it so desires, to:

(a) revise and update the Electoral Register. Intimation of this intention shall be given in terms of Schedule F hereto. Additional names shall be added to the Register in the form of an Addendum which shall also contain authority for the deletions which have been made;

or

(b) add to the Electoral Register the name of any person who has been added to the Communion Roll of the congregation, in the form of an Addendum.

In the case of (a) or (b) above, two copies of this Addendum, duly attested, shall be lodged with the Presbytery Clerk who, in name of the Presbytery, shall attest and return the principal copy, retaining the duplicate copy in his or her own possession.”

14. *In section 14(2)(c)(iv), after the words “the spouse” add the words “or civil partner, of the current minister, or”.*

15. *Amend sections 16(1) and (2) to read:*

“(1) The Nominating Committee shall have the duty of nominating one person to the congregation with a view to the election and appointment of a minister.

(2) It shall proceed by a process of announcement in a monthly vacancy list, application and interview, and may also advertise, receive recommendations and pursue enquiries in other ways. The Nominating Committee shall make available to all applicants and enquirers the Profile and Appendix specified in Section 12. Regardless of how such individuals may initially have been approached or identified, no individual shall be considered as a candidate for the vacancy unless he or she has first submitted a formal application.”

16. *In section 17(5) delete the words “World Alliance of Reformed Churches” and substitute “World Communion of Reformed Churches”.*

17. *Insert a new sub-section (8) in section 17:*

“(8) Notwithstanding sub-sections (1) to (6) above, an individual shall not be eligible to apply, or to be considered as an applicant, while he or she is the subject of ongoing proceedings being undertaken in accordance with the Discipline of Ministry Act (Act III 2001).”

18. *Amend section 20(1) to read:*

“20. Before the candidate is asked to accept Nomination, the Interim Moderator shall ensure that the candidate is given an adequate opportunity to see the whole ecclesiastical buildings (including the Manse) pertaining to the congregation, and to meet privately with all members of staff of the charge or of any wider ministry team. Furthermore, the candidate shall be provided with:

- (a) a copy of the current Presbytery Plan and of any current Basis of Adjustment or Basis of Reviewable Charge;
- (b) copies of the most recent annual report and accounts for each congregation of the charge, as approved by an independent examiner; and
- (c) copies of the most recent quinquennial inspection reports in relation to the buildings of the charge.

The candidate shall acknowledge receipt of the above documents in writing to the Interim Moderator."

19. *Amend section 25 as follows:*

*In section 25(1) in the first sentence delete "members" and substitute "those on the Electoral Register",*

*In section 25(2), delete "member" and substitute "an individual on the Electoral Register", and*

*In section 25(3) in the second sentence delete "regular worshippers in the congregation and by adherents whose names have not been entered on the Electoral Register" and substitute "persons associated with the congregation whose names have not been entered on the Electoral Register".*

20. *Delete the existing section 26 (Failure to Nominate) and substitute a new section 26 as follows:*

"The exercise by a congregation of its right to call a minister shall be subject to a time-limit of two years; this period shall be calculated from the date when intimation is given of the agreement to grant leave to call.

If no election has been made and intimated to the Presbytery by the expiry of that time then the leave to call expires and the Presbytery shall review the

matter. Thereafter the Presbytery may either (1) resolve to review the relevant aspects of the Presbytery Plan in accordance with the Appraisal and Adjustment Act (Act VII 2003) or (2) if the Presbytery is still satisfied that a minister should be appointed, resolve that the leave to call shall be reinstated and the Presbytery shall proceed in one of the following ways:

- (a) grant an extension, which shall usually be for a further year and instruct the Kirk Session to revise and update the parish profile in line with the template published in the Guidelines for Kirk Sessions. If no appointment is made in this further period, the Presbytery shall proceed again in terms of this section of the Act and may select any option, including further extensions;
- (b) instruct that a fresh Nominating Committee be elected in terms of section 14 above. The process shall then be followed in terms of this Act from the point of the election of the Nominating Committee; or
- (c) take steps to make such an appointment, proceeding as follows:–
  - (i) The Presbytery shall discharge the Nominating Committee, strengthen the Advisory Committee which had been involved in the case by the appointment of an additional minister and elder, instruct that Committee to bring forward to a subsequent meeting the name of an eligible individual for appointment to the charge and intimate this instruction to the congregation. If satisfied with the recommendation brought by the Advisory Committee, the Presbytery shall thereupon make the appointment.
  - (ii) The Presbytery Clerk shall thereupon intimate to the person concerned the fact of his or her appointment, shall request him or her to forward a letter of acceptance along with appropriate

Certificates if these are required in terms of section 27 below, and shall arrange with him or her to conduct public worship in the vacant church or churches on an early Sunday.

(iii) The Presbytery Clerk shall cause intimation to be made in the form of Schedule N that the person appointed will conduct public worship on the day specified and that a Call in the usual form will lie with the Session Clerk or other suitable person for not less than eight free days to receive the signatures of the congregation. The conditions governing the signing of the Call shall be as in section 25 above.

(iv) At the expiry of the time allowed, the Call shall be transmitted by the Session Clerk to the Presbytery Clerk who shall lay it, along with the documents referred to in sub-paragraph (ii) above, before the Presbytery at its first ordinary meeting or at a meeting *in hunc effectum*."

21. *In section 30(3) delete the word "church" from the first sentence and substitute "place of worship", and after the word "kneel" in the fifth sentence, add "if able to do so".*

22. *In section 32, in the second sentence after the words "shall first" add "endeavour to".*

23. *Insert a new section 32 as follows:*

**"32. Guidelines**

(1) The Ministries Council and the Legal Questions Committee shall jointly prepare and issue Guidelines for (a) Interim Moderators, (b) Kirk Sessions, (c) Nominating Committees and (d) Advisory Committees, in order to facilitate procedures in vacant congregations and also to expedite specific processes outlined in this Act. Such Guidelines shall be kept under review and

shall be updated periodically to reflect current policy and practice.

(2) The above Guidelines shall be followed by the individuals and bodies named above, who shall only depart from them with due cause and having first sought the advice of the Vacancy Procedure Committee."

24. ***The existing Schedules to the Act shall be deleted and replaced by the following:***

**A NOTICE OF DECISION OF VACANCY PROCEDURE COMMITTEE**

**– Section 2(1)**

***To be read on one Sunday***

Notice is hereby given that the Vacancy Procedure Committee of the Presbytery of . . . . . proposes [*proposed course of action*]. This action will proceed unless at least four persons, who are either communicant members of this congregation of X [and Y]\* or full members of Presbytery, together or separately submit to the Presbytery Clerk a request for this proposal to be considered at the next meeting of the Presbytery. Any such request must set out the relevant reasons.

You should submit any such request in writing to [*name and postal address of Presbytery Clerk*] by [*date seven days after date of this intimation*].

If four valid requests are received, then [*state the proposed course of action*] will be suspended and the approval of Presbytery will be required.

A . . . . . B . . . . . Presbytery Clerk

*\*refer to other congregation(s) if a linked charge*

*NB this intimation is also to be displayed as prominently as possible at the church building for seven days*

**B NOTICE CITING A CONGREGATION TO ATTEND – Section 2(5)**

*To be read on one Sunday*

Notice is hereby given that in connection with the [anticipated] vacancy in this congregation of X [and Y]\*, a valid request has been made for the matter of [here insert action or permission which had been proposed] to be considered by the Presbytery. [The proposed course of action] is in the meantime suspended

The Presbytery will meet to consider this matter at . . . . . on . . . . . the . . . . . day of . . . . . at . . . . . o'clock. Any member of this congregation of X [and Y]\* may attend that meeting and Presbytery shall hear any person whom it considers to have an interest.

A . . . . . B . . . . . Presbytery Clerk

*\*refer to other congregation(s) if a linked charge*

**C PREPARATION OF ELECTORAL REGISTER – Sections 14(1) and (2)**

*To be read on two Sundays*

Notice is hereby given that in view of the [anticipated] vacancy in this congregation of X [and Y]\*, the Kirk Session is about to make up an Electoral Register. This Electoral Register is a list of those who will be eligible to vote when the time comes to elect a Nominating Committee, and subsequently in the election of a new minister.

If your name and current address are already on the Communion Roll, then you will automatically be placed upon the Electoral Register. You will need to take no further action.

If you are a regular worshipper here, but are still a member of another congregation, and you wish to participate in the election of a minister to this congregation of X [and Y]\*, then you should arrange to hand in to the Session

Clerk a valid Certificate of Transference before the Kirk Session meets

If you are a regular worshipper here, and not a member of this or any other congregation, then the Kirk Session can add your name to the Electoral Register as an “adherent”. If you wish the Kirk Session to consider this, you should obtain a form from the Session Clerk, complete it and return it to [him or her] before the Kirk Session meets.

The Kirk Session will meet in . . . . . on . . . . . the . . . . . day of . . . . . at . . . . . to make up the Electoral Register

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*

**D FORM OF ADHERENT’S CLAIM – Section 14(1)**

I, 1 . . . . . of 2 . . . . ., being a regular worshipper in the Church of . . . . . and not being a member of any other congregation in Scotland, request to have my name put on the Electoral Register of the congregation of . . . . . as an adherent.

Date . . . . . (Signed) . . . . .

*1 Here enter full name in block capitals*

*2 Here enter address in full*

**E CONFIRMATION OF ELECTORAL REGISTER – Section 14(3)**

*To be read on one Sunday*

Notice is hereby given that the proposed Electoral Register of this congregation of X [and Y]\* has now been prepared.

If you believe that your name should be on the Register, you can ask for confirmation that it has been included immediately after this service [details of provision for this] or from the Session Clerk [details of how the Session Clerk can be contacted].

If your name is not on the proposed Electoral Register, and you believe it should be, you should inform the Session Clerk in writing before the Kirk Session meets to finalise the register on [date] at [place]. You are also welcome to attend that meeting, if you wish to make the case for your name being included.

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*

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#### **F REVISION OF ELECTORAL REGISTER – Section 14(6)**

##### ***To be read on two Sundays***

Notice is hereby given that since more than six months have elapsed since the Electoral Register of this congregation of X [and Y]\* was finally made up, it is now proposed that it should be revised.

If you believe that your name ought to be on the Register, you can ask for confirmation immediately after this service [details of provision for this] or from the Session Clerk [details of how the Session Clerk can be contacted].

If you find that your name does not appear, it can be added in the following circumstances:

If your name has been added to the full Communion Roll since the Register was drawn up, then your name will automatically be placed upon the Electoral Register on its revision. You will need to take no further action.

If you are a regular worshipper here, but are still a member of another congregation, then you should arrange to hand in to the Session Clerk a valid Certificate of Transference before the Kirk Session meets

If you a regular worshipper here, and not a member of this or any other congregation, then the Kirk Session can add your name to the Electoral Register as an “adherent”. If you wish the Kirk Session to consider this, you should obtain

a form from the Session Clerk, complete it and return it to [him or her] before the Kirk Session meets.

The Kirk Session will meet in . . . . . on . . . . . the . . . . . day of . . . . . at . . . . . to revise the Electoral Register

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*

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#### **G ELECTION OF NOMINATING COMMITTEE – Section 15(1)**

##### ***To be read on two Sundays***

Notice is hereby given that a meeting of this congregation of X [and Y]\* will be held in the Church [*or other arrangement may be given here*] on Sunday . . . . . at the close of morning [*or other main occasion of*] worship for the purpose of appointing a Nominating Committee. The task of the Nominating Committee will be to nominate one person to this congregation of X [and Y]\* to be the new minister.

At that meeting, the congregation shall be invited to elect [number of persons] people, who are on the Electoral Roll of this congregation of X [and Y]\*, to serve on the Nominating Committee. If you wish to propose anyone to serve on the Committee you may do so at the meeting providing the person has indicated a willingness to serve.

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*

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#### **H NOTICE OF NOMINATION – Section 22(2)**

##### ***To be read on two Sundays***

At a meeting held at . . . . . on . . . . ., the Nominating Committee chose the person who they wish to propose to this congregation of X [and Y]\* to be our new minister. The name of the person proposed is 1 . . . . .

Arrangements have been made for *[give name again]*, to conduct public worship in this Church on Sunday the . . . . . day of . . . . . at . . . . . o'clock.

Immediately after that service, there will be a vote on whether or not *[Name]* should be appointed as the new minister of this congregation of X *[and Y]\**. Anyone whose name appears on the Electoral Register of this congregation of X *[and Y]\** shall be entitled to vote. No-one else shall be entitled to vote.

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*  
*1 The name and status of the person should at this point be entered in full*

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#### I VOTING-PAPER – Section 24(1)

FOR Electing <i>[Name]</i>	
AGAINST Electing <i>[Name]</i>	

Directions to Voters – If you are in favour of electing *[Name]* put a cross (x) on the upper right-hand space. If you are not in favour of electing *[Name]* put a cross (x) in the lower right-hand space. Mark your voting-paper in this way with a cross, and put no other mark on your voting-paper or your vote may not be counted.

*Note: The Directions to Voters must be printed prominently on the face of the voting-paper.*

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#### J DECLARATION OF ELECTION RESULT – Section 24(6)

I hereby declare the results of the voting for the election and appointment of a minister to the vacant charge of . . . . . 1 to be as follows.

FOR Electing *[Name]*: [No of votes]  
 AGAINST Electing *[Name]*: [No of votes]

#### EITHER

(1) Therefore, *[Name]* has accordingly been elected and appointed as the new minister subject to the approval of Presbytery

#### OR

(2) In consequence of this vote there has been a failure to elect. The Nominating Committee is deemed to have been discharged. *[Continue in terms of Schedule G if appropriate.]*

Date . . . . .

C . . . . . D . . . . . Interim Moderator

1 Here enter details

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#### K THE CALL – Section 26(1)

##### Form of Call

We, members and adherents of the Church of Scotland and of the congregation known as . . . . . 1, being without a minister, address this Call to be our minister to you, *[Name]* . . . . . , of whose gifts and qualities we have been assured, and we warmly invite you to accept this Call, promising that we shall devote ourselves with you to worship, witness, mission and service in this parish, and also to the furtherance of these in the world, to the glory of God and for the advancement of His Kingdom.

1 Here enter details

##### Paper of Concurrence

We, persons associated with the congregation of the Church of Scotland known as . . . . . 1 concur in the Call addressed by that congregation to *[Name]* . . . . . to be their minister.

1 Here enter details

*Note: The Call and Paper of Concurrence should be dated and attested by the Interim Moderator before they are transmitted to the Clerk of the Presbytery.*

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#### **L SUBSCRIBING THE CALL – Section 26(1)**

##### ***To be read on at least one Sunday***

Notice is hereby given that this congregation of X [and Y]\* has elected [Name] to be our new minister and a Call to the said [Name] has been prepared. This Call will lie in [Place] . . . . . from . . . . . the . . . . . day of [Month] . . . . . until [Date which is at least eight days later], between the hours of . . . . . and . . . . . . . . . . . During that time any person whose name is on the Electoral Register of the congregation may sign the Call in person or by means of a mandate.

If a mandate is to be used, the relevant form may be obtained from the Session Clerk.

A paper of Concurrence will also be available for signature by any person who is connected with the congregation but whose name is not on the Electoral Register of the congregation. Children are also welcome to add their names to this paper.

C . . . . . D . . . . . Interim Moderator

*\*refer to other congregation(s) if a linked charge*

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#### **M MANDATE TO SIGN CALL – Section 26(2)**

I, 1 . . . . . of 2 . . . . . , being a person whose name is on the Electoral Register of the congregation, hereby authorise the Session Clerk, or other member of Session, to add my name to the Call addressed to [Name] to be our new minister.

(Signed) . . . . .

*1 Here enter full name in block capitals*

*2 Here enter address in full*

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#### **N CITATION IN CASE OF NOMINATION BY PRESBYTERY – Section 27(a)(iii)**

##### ***To be read on one Sunday***

Notice is hereby given that [Name], whom the Presbytery has appointed to be minister of this congregation of X [and Y] \* will conduct public worship in the Church on Sunday the . . . . . day of . . . . . at . . . . . o'clock.

A Call addressed to the said [Name] will lie in [Place] . . . . . from . . . . . the . . . . . day of . . . . . between the hours of . . . . . and . . . . . during the day and between the hours of . . . . . and . . . . . in the evening, until [Date which is at least eight days later]. During that time any person whose name is on the Electoral Register of the congregation may sign the Call in person or by means of a mandate.

If a mandate is to be used, the relevant form may be obtained from the Session Clerk.

A paper of Concurrence will also be available for signature by any person who is connected with the congregation but whose name is not on the Electoral Register of the congregation. Children are also welcome to add their names to this paper.

The Presbytery will meet to deal with the appointment and Call at . . . . . on . . . . . the . . . . . day of . . . . . at . . . . . o'clock. Any member of the congregation may attend that meeting.

A . . . . . B . . . . . Presbytery Clerk

*\*refer to other congregation(s) if a linked charge*

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#### **O NOTICE OF INDUCTION – Section 30(1) and section 31(1)**

##### ***To be read on two Sundays***

Notice is hereby given that the Presbytery of . . . . . has received a Call from this congregation of X [and Y]\*

addressed to . . . . . [Name] to be the new minister. This Call has been sustained as a regular Call, and has been accepted by him/her<sup>1</sup>.

The Presbytery, having judged the said . . . . . [Name] qualified for the ministry of the Gospel and<sup>2</sup> for this charge, has resolved to proceed to his/her [ordination and] induction on . . . . . [day of the week] the . . . . . [date] day of . . . . . [month] at . . . . . [time] o'clock. The only circumstance in which this would not occur is if an objection occurs which may reasonably impede it.

Notice is given that if any member of this congregation of X [and Y]\*, has objection to the life or doctrine of the said . . . . . [Name] you should intimate your objection at the earliest opportunity to the Presbytery Clerk. If you do this, you will also need to submit to the Presbytery Clerk appropriate evidence to substantiate your objection.

The Presbytery is to meet at . . . . . [time] on . . . . . [date as above]. If an objection is not notified in advance but is first brought at that meeting the objector must satisfy the Presbytery that there was no earlier opportunity to bring the objection to the attention of the Presbytery Clerk.

Unless a substantiated objection is made which is then upheld, the Presbytery shall proceed to [ordination and] induction<sup>3</sup> of the said . . . . . [Name] without further delay.

By order of the Presbytery

A . . . . . B . . . . . Presbytery Clerk

1 Add, where, appropriate, "and his/her translation has been agreed to by the Presbytery of . . . . ."

2 Omit "for the ministry of the Gospel and" if this minister to be inducted has been ordained previously

3 Omit, where appropriate, "ordination and"

*\*refer to other congregation(s) if a linked charge*

## P NOTICE OF ORDINATION IN CASE OF INTRODUCTION – Section 31(4)

### *To be read on two Sundays*

Notice is hereby given that a service of introduction is to take place because [narrate circumstances requiring service of introduction]. The Presbytery has found that the said [Name] has been regularly appointed and is qualified for the ministry of the Gospel and for the said appointment. The Presbytery has resolved to proceed to his or her ordination to the Holy Ministry and to his or her introduction as [specify appointment].

This ordination and introduction will take place on . . . . . the . . . . . day of . . . . . at . . . . . o'clock, and will proceed unless an objection occurs which may reasonably impede it.

Notice is given if any member of this congregation of X [and Y]\* has anything to object to in the life or doctrine of the said [Name], you may appear at the Presbytery meeting at . . . . . on . . . . . the . . . . . day of . . . . . at . . . . . o'clock to state your objection. Any objection which is made must be substantiated.

Unless a substantiated objection is made which is then upheld, the Presbytery will proceed to ordination and introduction of the said . . . . . [Name] without further delay.

By order of the Presbytery

A . . . . . B . . . . . Presbytery Clerk

*\*refer to other congregation(s) if a linked charge*

**APPENDIX C****AMENDMENTS TO ACT XVIII 1932****ACT AMENDING THE CONGREGATIONAL MEETINGS ACT (ACT XVIII 1932)***Edinburgh, [ ] May 2016, Session [ ]*

The General Assembly hereby enact and ordain that the Congregational Meetings Act (Act XVIII 1932), as amended, shall be further amended as follows:

1. *In section 4(a) the words “as soon as possible after the treasurer’s books have been audited at the close of the financial year” shall be deleted and the words “by the 30th day of June in each year following the close of the financial year” shall be substituted therefor.*
2. *In section 4(b) the words “by the 30th day of June in each year following the close of the financial year” shall be added at the end of the first sentence.*

**APPENDIX D****AMENDMENTS TO ACT II 1994****ACT AMENDING THE MODEL DEEDS OF CONSTITUTION ACT (ACT II 1994)***Edinburgh, [ ] May 2016, Session [ ]*

The General Assembly hereby enact and ordain that the Model Deeds of Constitution Act (Act II 1994), as amended, shall be further amended as follows:

1. *In the Annexation, Clause Second, in the first line the words “31st day of March” shall be deleted and the words “30th day of June” substituted therefor.*

**APPENDIX E****AMENDMENTS TO ACT III 1994****ACT AMENDING THE CONGREGATIONAL MEETINGS (RECEIPT OF ACCOUNTS) ACT (ACT III 1994)***Edinburgh, [ ] May 2016, Session [ ]*

The General Assembly hereby enact and ordain that the Congregational Meetings (Receipt of Accounts) Act (Act III 1994), as amended, shall be further amended as follows:

1. *In the Preamble:*
  - (i) *Delete “Accounts” and substitute “Trustees’ Annual Report and Accounts” and*
  - (ii) *Delete “Financial Board” where it appears twice and substitute “Trustees”.*
2. *In section 2(2), the words “31st day of March” shall be deleted and the words “30th day of June” substituted therefor.*

**APPENDIX F****REGISTRATION OF MINISTRIES OVERTURE**

*The General Assembly adopt the Overture the tenor whereof follows, and transmit the same to Presbyteries for their consideration under the Barrier Act, directing that returns be sent to the Principal Clerk not later than 31 December 2016.*

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

**Definitions**

1. (a) *“the Register” shall mean the Register of Ministry, created and maintained in terms of this Act.*
- (b) *“the Rules of Procedure” shall mean the Rules of Procedure applying to the Registration of Ministries Committee, as specified in Schedule 1 of this Act. The Legal Questions Committee shall have powers to approve subsequent amendments to the Rules of Procedure, subject to such amendments being reported to the following General Assembly.*
- (c) *the “Criteria for Assessment” shall mean the criteria used by the Registration of Ministries Committee when assessing applications related*

- to the Registration of Ministry, as specified in Schedule 2 of this Act. The Legal Questions Committee shall have powers to approve subsequent amendments to the Criteria for Assessment, subject to such amendments being reported to the following General Assembly.
- (d) “the Registration of Ministries Committee” (“the Committee”) shall mean a Committee appointed by the General Assembly as a Standing Committee, in terms of the Standing Orders of the General Assembly, which Committee shall be constituted as specified in the Rules of Procedure and shall have the task of dealing with various applications related to the Registration of Ministry.
- (e) “Minister of Word and Sacrament” shall be understood to include the following sub-categories:
- (i) “Minister” shall mean an individual who has been ordained to ministry as defined in section 1(d) of the Selection and Training for Full-Time Ministry Act (Act X 2004).
  - (ii) “Ordained Local Minister” shall mean an individual who has been ordained to ministry as defined in the Ordained Local Ministry Act (Act IX 2011).
  - (iii) “Auxiliary Minister” shall mean an individual who has been ordained to ministry as defined in the Auxiliary Ministry Act (Act XIII 2003).
- (f) “Deacon” shall mean an individual who has been ordained to ministry as defined in the Deacons Act (Act VIII 2010).

### **The Register of Ministry**

2. There shall be a Register of Ministry, which shall list all individuals who hold status as Ministers of Word and Sacrament, or as Deacons, within the Church of Scotland.

3. For each individual, the Register shall specify:
- (i) the name, address and contact details of the individual,
  - (ii) the Presbytery having jurisdiction over the individual,
  - (iii) the ministry to which the individual has been ordained,
  - (iv) the Category of registration for that individual, by specifying for that individual the Category **O**, **E**, **R**, **I**, **L**, or **S**, with the meaning stated below, and
  - (v) the date from which that Category of registration applies.

### **Initial creation of the Register**

4. The provisions contained in sections 5 and 6 shall apply to the initial creation of the Register, in the period following implementation of this Act.
5. Upon the implementation of this Act, each Presbytery shall proceed to compile its section of the Register in respect of individuals within its jurisdiction. Each Presbytery shall ensure that all Ministers of Word and Sacrament, and Deacons, within its jurisdiction shall be entered on the Register in a Category **O**, **E**, **R**, **I**, **L** or **S**, as appropriate to their type of ministry and circumstances, as specified below. Each Presbytery shall submit their section of the Register to the Ministries Council by 1 October 2017, with a view to the Ministries Council commencing maintenance of the Register from 1 January 2018.
6. The initial decision as to the Category in which each individual Minister of Word and Sacrament, or Deacon, should be entered shall lie with the relevant Presbytery. Any individual dissatisfied with that initial decision shall be entitled to query the Presbytery's decision with a view to having his or her categorisation amended to his or her satisfaction through discussion. In the event of any such

individual remaining dissatisfied with the Category in which he or she has been entered, then he or she shall have the right of appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

**Maintenance of the Register**

7. Once the Register has been initially compiled, the Ministries Council shall maintain the Register, with the assistance of Presbyteries.
  
8. Upon ordaining an individual, as a Minister of Word and Sacrament or as a Deacon, or upon admitting the holder of a Certificate of Eligibility awarded in accordance with the Admission and Readmission of Ministers Act (Act IX 2002) to membership of Presbytery, the Presbytery concerned shall send a relevant extract minute to the Ministries Council. On receipt of such an extract minute, the Ministries Council shall enter the individual on the Register of Ministry according to the Category specified by Presbytery, subject to the following provisos:
  - (i) A Minister of Word and Sacrament shall initially be entered in Category O, but if he or she is not appointed to a post which requires Category O registration, then his or her Category O registration shall lapse on the third anniversary of the date on which the relevant Exit Certificate, or Certificate of Eligibility, was first

granted. Thereafter the said individual shall either be registered in Category E in accordance with section 22, or else shall be entitled to choose between Category R or Category I registration and shall inform Presbytery of his or her choice.

- (ii) A Deacon shall initially be entered in Category E or in Category R.

Any individual dissatisfied with that initial decision shall be entitled to query the Presbytery's decision with a view to having his or her categorisation amended to his or her satisfaction through discussion. In the event of any such individual remaining dissatisfied with the Category in which he or she has been entered, then he or she shall have the right of appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

9. Upon written request by an individual, the Ministries Council shall provide to that individual an extract of his or her entry on the Register.

**Categories of registration for different types of ministry**

10. All Ministers, as defined in section 1(d)(i) above, shall be entered on the Register in one of the following categories, with the following meanings:

Category	Meaning	Examples
O	Authorised to hold a pastoral charge and to perform the functions of ministry generally. For the avoidance of doubt, an individual who holds Category O registration is authorised to perform the functions of ministry in Category E or Category R.	Parish ministers; Interim ministers, Transition ministers.
E	Authorised to perform the functions of ministry in connection with an employed ministry post, which is either defined within sections 11 – 13 of the Church Courts Act (Act III 2000), or has been agreed by the Presbytery of the	Chaplains (including Regular Forces' Chaplains); Ministers with employment contracts, including Associate ministers.

	bounds to be a post of equivalent nature in which the functions of ministry would be legitimately discharged. Also authorised to perform the functions of ministry on an occasional basis in other circumstances, but not to hold a pastoral charge.	
<b>R</b>	Retaining status as a minister and authorised to perform the functions of ministry on an occasional basis.	This may include retired ministers whose Category <b>O</b> registration has lapsed and those who have retired in accordance with the Long-Term Illness of Ministers Act (Act XV 2002).
<b>I</b>	Inactive – retaining status as a minister but no longer authorised to perform the functions of ministry.	This may include an individual who declares to Presbytery that he/she no longer intends to perform the functions of ministry. It may also include a person so registered by Presbytery.
<b>L</b>	Authorised to perform the functions of ministry on a limited basis, as specified in a Legally Binding Agreement, in terms of section 27 of this Act.	
<b>S</b>	Suspended judicially in terms of the Discipline of Ministry Act (Act III 2001). For the avoidance of doubt, this does not include an individual who has been administratively suspended under Act III 2001.	

11. All Ordained Local Ministers and Auxiliary Ministers, as defined in sections 1(d)(ii) and 1(d)(iii) above, shall be entered on the Register in one of the following categories, with the following meanings:

<b>Category</b>	<b>Meaning</b>	<b>Examples</b>
<b>O</b>	Authorised to hold a designated appointment as an OLM, or as an Auxiliary Minister and to perform the functions of ministry generally. For the avoidance of doubt, an individual who holds Category <b>O</b> registration is authorised to perform the functions of ministry in Category <b>R</b> .	For an OLM this would be an appointment made in accordance with section 12(1) of Act IX 2011, and for an Auxiliary Minister this would be an appointment made in accordance with section 2(a) of Act XIII 2003.

<b>R</b>	Retaining status as a minister and authorised to perform the functions of ministry on an occasional basis.	
<b>I</b>	Inactive – retaining status as a minister but no longer authorised to perform the functions of ministry.	This may include an individual who declares to Presbytery that he/she no longer intends to perform the functions of ministry. It may also include a person so registered by Presbytery.
<b>S</b>	Suspended judicially in terms of the Discipline of Ministry Act (Act III 2001). For the avoidance of doubt, this does not include an individual who has been administratively suspended under Act III 2001.	

12. All Deacons, as defined in section 1(e) above, shall be entered on the Register in one of the following categories, with the following meanings:

<b>Category</b>	<b>Meaning</b>	<b>Examples</b>
<b>E</b>	Authorised to hold a recognised diaconal appointment or post and to perform the functions of the diaconate generally.	This will include any Deacon holding a recognised diaconal appointment in accordance with section 11 of Act VIII 2010.
<b>R</b>	Retaining status as a Deacon and authorised to perform the functions of the diaconate on an occasional basis.	
<b>I</b>	Inactive – retaining status as a Deacon but no longer authorised to perform the functions of the diaconate.	This may include an individual who declares to Presbytery that he/she no longer intends to perform the functions of the diaconate. It may also include a person so registered by Presbytery.
<b>S</b>	Suspended judicially in terms of the Discipline of Ministry Act (Act III 2001). For the avoidance of doubt, this does not include an individual who has been administratively suspended under Act III 2001.	

**Functions of ministry**

13. The functions of ministry referred to in sections 10 and 11 above shall be:

- (1) the conduct of public worship;
- (2) the administration of the sacraments; and
- (3) the solemnisation of marriage.

**Functions of the diaconate**

14. The functions of the diaconate referred to in section 12 above shall be:

- (1) the exercise of a ministry of an evangelistic, pastoral, educational or social nature, including the conduct of public worship as need arises; and
- (2) the solemnisation of marriage, subject to the permission and supervision of the minister or Interim Moderator of the parish in which the marriage takes place. For the purposes of the conduct of marriages, section 19 of the Ministry Act (Act II 2000) (as amended) shall apply to Deacons.

**Locum Tenens**

15. Any Minister of Word and Sacrament, or Deacon, with an **O, E or R** registration shall be entitled to work as a locum tenens, subject to the following proviso: an Ordained Local Minister or Auxiliary Minister may only work as a paid locum tenens where he or she is already working in a designated Ordained Local Ministry, or Auxiliary Ministry, appointment and has already fulfilled the requirements of that appointment.

**Forces' Chaplains**

16. The Ministries Council, in consultation with the Committee on Chaplains to Her Majesty's Forces, shall arrange appropriate input to the annual conference for Forces' Chaplains, with a view to keeping Regular Chaplains up to date with ongoing developments in ministry and in relevant aspects of

practice and procedure, and thereby facilitating applications for Category **O** registration from any such Chaplains upon leaving the Forces.

**Specific provisions applying to Category O registration**

17. At the date on which an individual ceases to hold an appointment requiring Category **O** registration, thereafter he or she may choose to retain his or her Category **O** registration for a period of up to three years, subject to the following exceptions which shall result in immediate re-categorisation:

- (i) Where Categories **L or S** pertain.
- (ii) Where an individual is added to the supplementary lists **G, or D** as outlined in section 32.
- (iii) Where an individual is leaving a post for reasons of ill health.
- (iv) Where an individual is demitting his or her first charge within the first five years of ministry and the Presbytery is not satisfied that there are exceptional circumstances which justify this in accordance with section 4(2) of the Vacancy Procedure Act (Act VIII 2003).

In the event of such an individual not taking up a relevant appointment within that three year period, then his or her Category **O** registration shall lapse. Thereafter he or she shall either be registered in Category **E** in accordance with section 22, or else shall be entitled to choose between Category **R** or Category **I** registration and shall inform Presbytery of his or her choice.

18. At the date on which an individual has been newly granted Category **O** registration by the Registration of Ministries Committee, thereafter he or she shall remain qualified to seek a relevant appointment for a period of three years. In the event of an individual not taking up such an appointment within that time, then his or her Category **O** registration shall lapse. Thereafter he or she shall either be registered in

Category E in accordance with section 22, or else shall be entitled to choose between Category R or Category I registration and shall inform Presbytery of their choice.

#### Annual Review of Categories of registration

19. There shall be a process of annual review of the Categories of registration then appearing on the Register for each individual, to determine whether any changes are necessary or appropriate, which process of annual review shall proceed as set out in this section 19. The first process of review shall commence in March 2018.

- (1) Not later than 31 March each year, the Ministries Council shall send to each Presbytery Clerk an extract from the Register, listing all individuals within the jurisdiction of that Presbytery whose names appear on the Register and providing for each individual the existing registration information specified in section 3 of this Act.
- (2) Not later than 30 April each year, the Presbytery Clerk shall write to:
  - (i) Any individual who still holds Category O registration, but without holding a relevant post, informing him/her of the date on which his/her Category O registration shall lapse in terms of section 18 above. If the relevant date is reached without the individual obtaining a Category O post, then the individual concerned shall then be entitled to choose between Category R or Category I registration and shall inform Presbytery of his or her choice.
  - (ii) Any individual who still holds Category E registration, but without holding a relevant post, informing him or her that his or her Category E registration has lapsed. The individual concerned shall then be

entitled to choose between Category R or Category I registration and shall inform Presbytery of his or her choice.

- (iii) Any individual holding Category R registration enquiring whether or not they wish such registration to be renewed and requesting details of ministerial functions exercised during the preceding year. Upon receipt of such information, Presbytery shall determine whether to allocate Category R or Category I to that individual.
- (iv) Any individual holding Category I registration and whose circumstances are not known to the Presbytery, asking him or her to inform Presbytery if during the previous twelve months he or she has left the communicant membership of the Church of Scotland. On receiving such notice, then the name of that individual shall be removed from the Register.

In each such case the Presbytery Clerk shall specify to the individual concerned that any relevant information must be submitted to Presbytery by 31 May.

- (3) After 31 May each year, each Presbytery shall assign each and every individual on its section of the Register to a Category of registration for the following year commencing 1 July, based upon the information supplied in terms of subsection (2) above. For the avoidance of doubt, where Presbytery requests information but that is not forthcoming, Presbytery shall be entitled to allocate a Category of registration as it sees fit. An individual shall generally remain in the same Category of registration unless there has been a change of circumstances which makes another Category more appropriate. Presbytery shall submit the said section of the Register to the Ministries Council by 30 June.

**Appeals arising from annual review process**

20. Any individual who is dissatisfied with his or her Category of registration as annually allocated by Presbytery may appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

**Intermediate re-categorisation by Presbyteries or by the Ministries Council**

21. Each of the Presbytery and the Ministries Council shall have the right to re-categorise any individual's entry on the Register immediately upon becoming aware of a change in his or her circumstances. If such re-categorisation is made by Presbytery it shall immediately advise (i) the individual and (ii) the Ministries Council. If such re-categorisation is made by the Ministries Council it shall immediately advise (i) the individual and (ii) the Presbytery. For the avoidance of doubt, (i) a re-categorisation may include removal of the individual from the Register, in which case sections 32 and 33 below may apply, and (ii) any Minister of Word and Sacrament or Deacon may also have his or her registration adjusted or removed at any time as a consequence of judicial process.
22. If a Minister or Deacon currently holding Category **O, R or I** registration takes up an employed post as defined in section 10 or section 12 of this Act, that individual shall be re-categorised as Category **E** except in the following circumstances:
- (i) if he or she is choosing to retain Category **O** registration under section 17 of this Act; and
  - (ii) if he or she left a post for reasons of ill health, then an application for Category **E** registration must be made to the Registration of Ministries Committee under section 28 of this Act before any re-categorisation can occur.
23. Any individual dissatisfied with their Category of registration as re-categorised by Presbytery or the

Ministries Council may appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

**Moving Presbytery**

24. If an individual wishes to move to the bounds of another Presbytery then he or she shall first obtain an extract of his or her entry on the Register in terms of section 9 of this Act. Such extract shall be exhibited by the individual to the Clerk of the Presbytery to which he or she wishes to transfer. On accepting an individual under its jurisdiction, a Presbytery shall be entitled to re-categorise that individual's entry on the Register in terms of section 21, subject always to the individual's right of appeal under section 23.

**Applications for change of Category of registration****Application for Category O registration**

25. All applications for Category **O** registration, from individuals registered in categories **E, R, or I**, or from individuals whose existing Category **O** registration is due to expire, shall be dealt with in terms of this section 25.
- (1) Applications shall be made to the Registration of Ministries Committee on a form specified by that Committee. In considering such applications, the Committee shall:
    - (i) invite the Presbytery to which the individual is accountable to comment on the application.
    - (ii) be entitled to obtain an Occupational Health Report in relation to the applicant. Furthermore the Committee shall be obliged to obtain such a report if the applicant left his or her previous appointment for reasons of ill health.
    - (iii) consider the personal circumstances of the applicant in accordance with paragraph 1 of the Criteria for Assessment which are outlined in Schedule 2 of this Act.

- (iv) be entitled to ask the applicant to attend a meeting of the Committee for an interview.
- (2) In giving its decision on the application, the Committee may specify what, if any, programme of mentoring, familiarisation, further education, or training, the applicant should be required to undergo. In such cases the Committee shall further specify:
  - (i) which, if any, aspects of this specified programme must be completed prior to Category O registration being granted.
  - (ii) which, if any, aspects of this specified programme may be completed subsequent to Category O registration being granted.

In each such instance the Committee shall prescribe a timescale within which such aspects of the programme should be completed.

- (3) Having completed any aspects of the specified programme outlined in accordance with section 25(2)(i), an individual may be granted Category O registration, subject to signing a binding agreement that he or she will make all reasonable efforts to complete any remaining aspects, outlined in accordance with section 25(2)(ii), within the prescribed timescale. Subsequent failure to abide by such a binding agreement may be considered to constitute a disciplinary offence.
- (4) In order to grant Category O registration the Committee must be satisfied that the individual in question is fit to perform the duties of the relevant post. The Committee may refuse to grant Category O registration, subject to the grounds for such a decision being clearly stated.

#### **Applications from individuals registered in Category S**

26. Any applications for a change of registration from individuals registered in Category S shall be dealt with in terms of this section 26.

- (1) Applications shall be made to the Registration of Ministries Committee on a form specified by that Committee. In considering such applications, the Committee shall:
  - (i) invite the Presbytery to which the individual is currently accountable, and, if different, also the Presbytery to which the individual was accountable at the time when the relevant suspension was imposed, to comment on the application.
  - (ii) instruct the applicant to provide two character references from individuals within the membership of the Church, at least one of whom must be a serving Minister or Deacon.
  - (iii) consider the personal circumstances of the applicant in accordance with the relevant sections of paragraph 2 of the Criteria for Assessment which are outlined in Schedule 2 of this Act.
- (2) In giving its decision on the application, the Committee shall clearly state the grounds on which it has been taken.
- (3) For the avoidance of doubt, where the Committee decides that a suspension is to be lifted and Category O registration is being sought, the application shall be considered in terms of section 24 in addition to this section 26 if the applicant has not served in a Category O appointment within the preceding three years.

**Applications from individuals registered in Category L**

27. Any applications for a change of registration from individuals registered in Category L shall be dealt with in terms of this section 27.

- (1) Where a Minister has agreed to demit his or her charge in the interests of peace of the Church and has entered into a legally binding written agreement with the Presbytery and the Ministries Council (a "Legally Binding Agreement") in terms of which he or she agrees to specified limitations upon his or her eligibility to perform the duties of a Minister for a specified period, the said minister shall be entered on the Register in Category L.
- (2) A Minister who is entered on the Register in Category L may undertake only those functions of ministry which are defined in his or her Legally Binding Agreement.
- (3) The Minister shall be entitled to a review (or reviews) of the terms and conditions of the Legally Binding Agreement after expiry of a period (or periods) specified within the Legally Binding Agreement. Such a review (or reviews) shall be conducted by the Ministries Council at the point(s) indicated in the Legally Binding Agreement.
- (4) The Ministries Council shall inform the Minister concerned and also the Presbytery of the outcome of all such reviews. Subject to satisfactory fulfilment of the terms and conditions specified in the Legally Binding Agreement, the Ministries Council may resolve that the Minister shall be eligible to apply for a change of Registration in accordance with the provisions of this Act. For the avoidance of doubt, no Minister entered in Category L may apply for a change of registration without such

a resolution having first been made by the Ministries Council.

- (5) A Minister shall have a right of appeal to the Ministries Appeal Panel in respect of any recommendation from the Ministries Council with which he or she is aggrieved in terms of section 31 of this Act.

**Applications for change of Category of registration from persons who left a post for reasons of ill health**

28. Any individual who left a post for reasons of ill health must, if wishing to obtain a Category O or E registration, apply to the Registration of Ministries Committee on a form specified by that Committee, which Committee must obtain an Occupational Health Report on the individual and in order to grant such registration, must be satisfied that the individual in question is fit to perform the duties of a parish minister, or of the relevant employment, as the case may be. All other relevant provisions of this Act, as contained in sections 25 and 29 of this Act shall also apply.

**Other applications for change of Category of registration**

29. All applications for a change of Category of registration other than those specified in sections 25 to 28 above shall be made to the Presbytery having jurisdiction over that individual. Applications shall be made to the Presbytery on a form specified by the Ministries Council for all Presbyteries. In considering such applications, the Presbytery shall:
- (i) consider the personal circumstances of the applicant, and
  - (ii) be entitled to ask the individual in question to attend a meeting of representatives of the Presbytery for an interview.

Any individual who is dissatisfied with a decision of Presbytery in terms of this section 28 shall have the right of appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

#### Appeals from sections 25 to 29

30. Any individual who is dissatisfied with a decision of the Registration of Ministries Committee in terms of sections 25 to 28 of this Act, or with a decision of Presbytery in terms of section 29 of this Act shall have the right of appeal to the Ministries Appeal Panel in terms of section 31 of this Act.

#### Appeals to Ministries Appeal Panel

31. An appeal to the Ministries Appeal Panel shall be heard in terms of the Ministries Appeal Panel Act (Act VI 2007). Such appeal shall be intimated to the Principal Clerk within fourteen days of the relevant decision of the Committee. An appeal may only be brought on one or more of the following grounds: (a) error in Church law; (b) that in the course of the registration procedure there was a breach of the principles of natural justice or there were irregularities in the process; or (c) that the final decision was influenced by incorrect material fact. The decision reached by the Ministries Appeal Panel in relation to such an appeal shall be final.

#### Supplementary Lists

32. The Ministries Council shall compile and maintain two supplementary lists, **G** and **D**, as specified below,

which shall be considered to stand apart from the Register of Ministry.

- (1) List **G** shall contain the names of individuals who were previously Ministers of Word and Sacrament or Deacons of the Church of Scotland but who voluntarily demitted their status.
- (2) List **D** shall contain the names of individuals who were previously Ministers of Word and Sacrament or Deacons of the Church of Scotland but who were judicially deprived of status.

33. Any individual recorded on lists **G**, or **D**, who wishes to resume practice as a Minister of Word and Sacrament or as a Deacon, of the Church of Scotland, must make application in accordance with the Admission and Re-admission of Ministers Act (Act IX 2002).

#### Amendments and Repeals

34. Amendments to existing legislation as follows:

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

NAME OF ACT	NUMBER & YEAR	SECTIONS	PROPOSED CHANGES
Candidates, Licentiates and Probationers	Act XI 1994	1(b) and 5	No changes. Exit Certificates, Graduate Candidate's Certificates and Certificates of Eligibility will continue to exist.
Ministry	Act II 2000	3(1)	To be reviewed according to remit requested for Legal Questions Committee as to

			considering questions of membership of Presbytery.
		3(2)	Replace reference to "Practising Certificate/ Qualified Practising Certificate" with reference to being registered on the Register of Ministry. The intention is that persons appearing on the Register of Ministry with Category <b>O</b> , <b>E</b> or <b>R</b> registration will be able to perform the functions of ministry (as defined in the RoM Overture).
		4	Delete. Insert a note in italics to say that the "functions of ministry" are defined in the RoM Overture.
		5 to 17 (PCs)	Delete. Insert a note in italics to say that these provisions are replaced by the RoM Overture.
		18 (QPCs - LBA)	To be deleted as provisions are to be covered in RoM Overture. Insert a note in italics to say that these provisions are replaced by the RoM Overture.
Church Courts	Act III 2000	11-14	As mentioned above, the Legal Questions Committee is to request a remit to look further at questions of membership of Presbytery. In section 14, replace reference to "Practising Certificate" with reference to applying to be being registered on the Register of Ministry.
		18	Replace reference to "Practising Certificate" with reference to being entitled to choose between Category <b>R</b> or <b>I</b> registration.
Discipline of Ministry	Act III 2001	1(1)(j)	A new Discipline Act is to be brought to the General Assembly of 2017, and this will be drafted to align with the RoM Overture. In the event that the new Discipline Act does not

			come into force as an Interim Act in May 2017, amendment to terminology in the existing Discipline Act will be needed, to replace references to "Practising Certificates" with reference to being registered on the Register of Ministry.
Ministers and Deacons in Public Office	Act IV 2001	2(2)	Replace reference to "Practising Certificate" with reference to the individual being registered on the Register of Ministry in the appropriate Category of registration.
Admission & Readmission of Ministers	Act IX 2002		No changes required.
Long Term Illness of Ministers	Act XV 2002	12 (QPCs)	To be deleted as provisions are to be covered in RoM Overture. Insert a note in italics to say that these provisions are replaced by the RoM Overture.
Vacancy Procedure	Act VIII 2003	17	Amend so that a Minister (as defined in the RoM Overture) may only apply for a charge if he or she holds Category O registration, or else has submitted an application for such registration which is under consideration by the RoM Committee.
		20(3)(a)	Amend so that the evidence as to eligibility of the nominee is of Category O registration rather than a Practising Certificate.
		26(a)(ii)	Amend to refer to evidence of Category O registration.

Auxiliary Ministry	Act XIII 2003	2(d)	Amend to say that when an Auxiliary Minister ceases to serve in a designated appointment he or she shall be entitled to choose between Category R and Category I registration and shall inform Presbytery of his or her choice.
Selection & Training	Act X 2004	22	Amend so that the eligibility of a Graduate Candidate to be called to a charge would lapse three years after his or her Exit Certificate was first awarded. Such individuals would subsequently be able to seek renewal of their eligibility through an application procedure similar to that of ministers seeking Category O registration under section 25 of the RoM Overture.
Ministries Appeal Panel	Act VI 2007	5	Delete the second sentence and say that the MAP shall also hear certain appeals against decisions taken under the RoM Overture.
International Presbytery	Proposed for GA 2016	Para 1 of Schedule 2	Replace reference to not being entitled to a Practising Certificate with reference to not being entitled to be registered on the Register of Ministry created and maintained in terms of the RoM Overture.
Deacons	Act VIII 2010	14(a) & (b)	In (a), replace reference to a Practising Certificate with reference to the Presbytery with which he or she is registered on the Register of Ministry. For section (b), such Deacons shall have Category I registration.
		16	Delete and substitute with a section headed "Registration of Deacons", saying that Deacons

			shall be registered on the Register of Ministry in accordance with the RoM Overture.
		17	Delete. Insert a note in italics to say that these provisions are replaced by the RoM Overture.
		Appendix A	In "Constitution", Council is to consist of Deacons registered on the Register of Ministry, with those in Category R or I entitled to attend at their own expense and be non-voting members.
		Appendix C	In "Membership", distinguish Category E, R & I Deacons appropriately.
PVG	Act VII 2011	1(c)	Replace reference to "Practising Certificate" with reference to being registered on the Register of Ministry.
		1(d)	Insert reference to Deacons being those registered on the Register of Ministry.
Ordained Local Ministry	Act IX 2011	12(4) and 13(3)	Amend to say that when an OLM ceases to serve in a designated appointment he or she shall be entitled to choose between Category R and Category I registration and shall inform Presbytery of his or her choice.
		13(2)	Amend to say that when an OLM moves from one Presbytery to another he or she shall be subject to the terms of section 24 of the RoM Overture. Questions of membership of Presbytery to be considered by the Legal Questions Committee in terms of the remit referred to above.

**SCHEDULE 1: RULES OF PROCEDURE OF THE  
REGISTRATION OF MINISTRIES COMMITTEE**

1. The Registration of Ministries Committee (“the Committee”) shall be appointed by the General Assembly as a Standing Committee, in terms of the Standing Orders of the General Assembly.
2. The purpose of the Committee shall be to deal with various applications related to the Register of Ministry.
3.
  - (1) The Committee shall be a committee of five persons, consisting of a Convener, Vice-Convener and three other members. One member shall be appointed by the Legal Questions Committee, one by the Ministries Council and the other three members shall be appointed by the General Assembly on the nomination of the Nomination Committee. At least one member shall be legally qualified, at least one shall be a Minister of Word and Sacrament and at least one shall be an elder.
  - (2) The Committee shall itself choose a Convener and a Vice-Convener from among its number.
  - (3) The quorum of the Committee shall be three including either the Convener or Vice-Convener, and including at least one elder and at least one minister (each of whom may be the Convener or Vice-Convener).
  - (4) A member of the Committee shall not sit to hear an application from a person from their own Presbytery. If necessary, a substitute member may be co-opted to the Committee by appointment from the Legal Questions Committee or the Ministries Council.
  - (5) The following persons shall also attend the Committee *ex officio*s in an advisory capacity (i) one or other of the Clerks of the General Assembly and (ii) the Secretary to the Ministries Council. These persons shall not be members of the Committee.
- (6) Where the Act specifies that a Presbytery may comment on a particular application, a representative of that Presbytery shall be entitled to attend the relevant Hearing. The Clerk of the Committee shall provide any such Presbytery with at least fourteen days’ notice of such a hearing taking place. For the avoidance of doubt, a representative of Presbytery shall be entitled to comment on the application, but shall not vote when a decision is made. In the event of a Presbytery representative failing to attend, the Committee shall be entitled to proceed with the Hearing.
4. The Committee shall be clerked by the appropriate official within the Ministries Council. The Clerk shall not be a member of the Committee. If the Clerk is not present at a Hearing, the Committee shall appoint a substitute, whether or not a member thereof, to act as Clerk of the Committee during that Hearing.
5. The Committee shall hold Hearings as required to deal with its business. Hearings shall be called by the Clerk thereof. A Hearing may last for as long as business requires, and may deal with various applications.
6. The procedure of the Committee at its Hearings shall be in accordance with the Standing Orders of the General Assembly so far as applicable and consistent with this Act. The Committee shall act in accordance with the Constitution of the Church and the Acts of the General Assembly and nothing in this Act shall be construed as conferring power to contravene or amend existing legislation, or to legislate. The Committee shall be accountable to the Ministries Appeal Panel for its decisions.

**SCHEDULE 2: CRITERIA FOR ASSESSMENT BY THE  
REGISTRATION OF MINISTRIES COMMITTEE**

The Committee shall apply the following criteria when assessing applications made in accordance with this Act.

1. Any application which is made in accordance with section 25 of the Act shall be assessed against the following criteria:

- (1) The extent to which the applicant has recent experience of leading worship within, or beyond, the Church of Scotland.
- (2) The extent to which the applicant has recent experience of undertaking pastoral work within, or beyond, the Church of Scotland.
- (3) Whether the applicant has recent experience of the dynamics involved when working with volunteers.
- (4) The extent to which the applicant has recently participated in the courts, of the Church, and/or their councils or committees, in ways which have kept him or her familiar with current practice.
- (5) The applicant's current knowledge of Church Law, particularly any areas of Church Law where changes have occurred since he or she was last engaged in the relevant field of ministry, and those areas of Church Law which govern current practice in ministry and mission.(6)

The applicant's knowledge of matters of civil law, as it currently affects congregations, and Ministers of Word and Sacrament working within them.

- (6) If relevant, the circumstances which led to the applicant demitting his/her first charge within the first five years of ministry.(8) Any other matter which the Committee reasonably considers pertinent in relation to the application in question.

2. Any application which is made in accordance with section 26 of the Act, shall be assessed against the following criteria:

- (1) Where the relevant suspension was imposed for a fixed period, in accordance with section 1(1)(j)(ii) of the Discipline of Ministry Act (Act III 2001), the Committee shall consider:
  - (i) Whether or not the fixed period of the suspension has been served.
  - (ii) Whether or not the information provided in accordance with section 26(1)(i) and section 26(1)(ii) provides satisfactory assurance in relation to the current good conduct of the applicant.
  - (iii) Any other matter which the Committee reasonably considers pertinent in relation to the application in question.
- (2) Where the relevant suspension was imposed without limit of time but subject to a minimum period of suspension, in accordance with section 1(1)(j)(iii) of the Discipline of Ministry Act (Act III 2001), the Committee shall consider:
  - (i) The circumstances which led to the applicant being suspended and the determination of the Presbyterial Commission at the time when the relevant suspension was imposed, including without limitation, all paperwork submitted to the court in connection with that decision. The Committee shall further consider, if appropriate, the determination of the Judicial Commission which heard any associated appeal, including without limitation, all paperwork submitted to the court in connection with that decision.
  - (ii) Whether or not the information provided in accordance with section 26(1)(i) and section 26(1)(ii) provides satisfactory

assurance in relation to the current good conduct of the applicant.

- (iii) Whether or not the specified minimum period of suspension has been completed.
- (iv) Whether or not the period of suspension which has been served is considered to be adequate.
- (v) Any other matter which the Committee reasonably considers pertinent in relation to the application in question.

## APPENDIX G

### ACT AMENDING THE CO-OPERATION BETWEEN PRESBYTERIES ACT (ACT VI 2002)

*Edinburgh, [ ] May 2016, Session [ ]*

The General Assembly hereby enact and ordain that the Co-operation between Presbyteries Act (Act VI 2002), as amended, shall be further amended as follows:

1. *In section 1, delete the words "an immediately neighbouring" and substitute "another".*