

# **I DISCIPLINE ACT (ACT I 2019) (AS AMENDED BY ACTS XII 2020, V 2021 AND XI 2022)**

*Edinburgh, 18 May 2019, Session 3*

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

## **Part 1 DEFINITIONS, INTERPRETATION AND PRELIMINARY MATTERS**

1. For the purposes of this Act:

- (1) “Administrative Suspension” shall mean an instruction given, at any stage of proceedings in terms of this Act, by a Presbytery or any Committee or individuals holding delegated powers from Presbytery so to do, to a Respondent to abstain from the exercise of all of the functions of the office held by the Respondent until the final disposal of proceedings under this Act and “Administratively Suspended” shall be construed accordingly. For the avoidance of doubt, Administrative Suspension shall not constitute or form a part of any form of Censure.
- (2) “Adviser” shall mean a Minister, being a member of Presbytery, selected from a list maintained by the Legal Questions Committee, who acts as an adviser to an Assessor.
- (3) “Alternative Contact” shall mean the alternative contact to the Presbytery Clerk in terms of the Complaints Procedure.
- (4) “Assessor” shall mean (i) an Elder, being a member of a Kirk Session, who is legally qualified and has knowledge of Church Law, or (ii) a solicitor employed in the Church’s Law Department, or (iii) an investigator with experience of the investigation of professional misconduct: any such person in category (i), (ii) or (iii) being appointed from a panel of Assessors in terms of section 17(2), and all Assessors being appointed to the panel by the General Assembly on the nomination of the Nomination Committee.
- (5) “Auxiliary Minister” shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).
- (6) “breach” shall mean material breach.
- (7) “Bullying” shall mean a course of conduct (i.e. conduct which occurs on at least two occasions) amounting to offensive, threatening, abusive, malicious, intimidating or insulting behaviour that may be an abuse or misuse of power, position or knowledge through means that undermine, humiliate, denigrate or injure the person concerned and which is behaviour occurring in circumstances where it would appear to a reasonable individual that it would amount to bullying of that person.
- (8) “Censure” shall have the meaning given to it in Part 10.
- (9) “Censure with consent” shall mean a Censure consented to by the Respondent.
- (10) “Complainer” shall mean a person, Committee or other body making a Disciplinary Complaint.
- (11) “Complaints Procedure” shall mean the complaints procedure operated by Presbyteries as initially approved by deliverance of the General Assembly of 2014 and as amended from time to time.
- (12) *Definition of “Council” deleted when the Ministries Council became the “Faith Nurture Forum”.*
- (13) “Deacon” shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).
- (14) “Disciplinary Complaint” shall mean (i) a written allegation or allegations that a Disciplinary Offence has been committed or (ii) circumstances coming to the

attention of Presbytery which indicate that a Disciplinary Offence may have been committed.

- (15) "Disciplinary Offence" shall have the meaning assigned to it in Part 4.
- (16) "Disciplinary Proceedings" shall mean those proceedings carried out in accordance with the provisions of Part 8 in respect of any Disciplinary Offence alleged to have been committed by a Respondent.
- (17) "Discipline Tribunal" shall mean a body of three or five persons drawn from the Judicial Panel and constituted to hear Disciplinary Proceedings under this Act, more particularly described in section 7.
- (18) "Elder" shall mean a person ordained as an elder (whether or not serving on a Kirk Session, save where otherwise specified in this Act).
- (18A) "FAPLT" shall mean the Faith Action Programme Leadership Team or any Task Group or Committee of the Faith Action Programme Leadership Team.
- (19) "Graduate Candidate" shall have the meaning ascribed to it in the Selection and Training for Full-Time Ministry Act (Act X 2004).
- (20) "Harassment" shall mean unwanted physical, verbal or non-verbal conduct related to a Protected Characteristic which has the purpose or effect of violating the dignity of another person or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person, declaring that in deciding whether conduct has that effect, there shall be taken into account the perception of that person, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.
- (21) "Investigatory Proceedings" shall mean those proceedings carried out in accordance with the provisions of Part 7 in respect of any Disciplinary Offence alleged to have been committed by a Respondent.
- (22) "Judicial Commission" means the Judicial Commission as defined in the Appeals Act (Act I 2014).
- (23) "Judicial Panel" shall mean the pool of persons from which shall be appointed (a) a Reviewer, and (b) the members to serve on the Discipline Tribunal and the Judicial Commission.
- (24) "Judicial Suspension" shall mean any suspension imposed as a Censure in terms of Part 10.
- (25) "Legal Aid Fund" shall mean the Fund maintained by the Legal Questions Committee in terms of the Legal Aid in Disciplinary Proceedings Regulations (Regulations I 2018).
- (26) "Licentiate" shall have the meaning ascribed to it in the Candidates, Licentiates and Probationers Act (Act XI 1994).
- (27) "Minister" and "Minister of Word and Sacrament" shall have the meanings respectively ascribed to them in the Registration of Ministries Act 2017 (Act II 2017).
- (28) "Office-Bearer" shall, for the purposes of this Act only, mean an individual who is serving on a Congregational Board, Deacons' Court or Board of Management, or any other body deemed by the Presbytery to form part of the governance arrangements of any congregation, or on any committee of any of these bodies or of a Kirk Session or Presbytery, and shall, for the avoidance of doubt, include all Clerks and Treasurers, whether or not such individuals are serving as voting members of any such governing body.
- (29) "Ordained Local Minister" shall have the meaning ascribed to it in the Registration of Ministries Act (Act II 2017).
- (30) "Procedural Review" shall mean a procedural review carried out by a Reviewer in terms of sections 19(3), 22(2) or 27.
- (31) "Protected Characteristic" shall mean any of the following:
  - Age
  - Disability
  - Gender re-assignment

Race  
Religion or belief  
Sex  
Sexual orientation

- (32) "Reader" shall have the meaning ascribed to it in the Readership Act (Act XVII 1992).
- (33) "Referral" shall mean the referral by a Presbytery of a Disciplinary Complaint to an Assessor in terms of Part 5.
- (34) "Register of Ministry" shall mean the Register referred to in section 2 of the Registration of Ministries Act (Act II 2017).
- (35) "Respondent" shall mean a person referred to in section 10 against whom a Disciplinary Complaint has been made or has arisen.
- (36) "Reviewer" shall mean a person selected from the Judicial Panel and appointed by the Convener or Vice-Convener of the Legal Questions Committee to carry out a Procedural Review.
- (37) "Victimisation" shall mean subjecting another person to a detriment because that person has brought a Disciplinary Complaint under this Act, given evidence or information in connection with proceedings under this Act, or done any other thing for the purposes of or in connection with this Act, unless that person acted in bad faith in so doing.
2. For the purposes of this Act (a) the singular shall include the plural unless the contrary intention appears; (b) any reference to a "section" or a "Part" shall be to a section or Part of this Act, (c) any reference to "days" in relation to periods of time or time limits shall be to consecutive calendar days, (d) any reference to an Act of the UK or Scottish Parliament shall include a reference to any subsequent modification, replacement or re-enactment thereof; and (e) any reference to a Certificate of Eligibility shall include a Temporary Certificate of Eligibility and a Restricted Certificate of Eligibility.
3. Meetings of the Assessor and the Adviser or of the Discipline Tribunal may be held by conference telephone call, video conference or the like electronic means and proceedings at any meeting held by such means shall be as valid as if the Assessor and Adviser or the members of such Tribunal and any other parties, recorded as attending such meeting, had all been physically present, in person, at a single geographic location.
4. No Assessor, Adviser or Reviewer shall:
- (1) take part in any proceedings involving the Presbytery of which they are a member or in which the Kirk Session of which they are a member is situated; or
  - (2) be appointed to the Discipline Tribunal or a Judicial Commission in any single case or series of related cases in which they have acted as Assessor, Adviser or Reviewer, which proceeds against any Respondent in terms of this Act.
5. The rules of civil evidence in Scots Law shall apply to the conduct of any proceedings governed by this Act and the standard of proof required shall be the balance of probabilities. Where the Disciplinary Complaint is the same as, or substantially similar to, any charge brought against the Respondent in criminal law and the Respondent is proved to have been convicted of the offence in criminal law, by or before any court in the United Kingdom, then the Respondent shall be taken to have committed that offence, unless the contrary is proved.
6. (1) The Assessor may sist proceedings under this Act at any time, in whole or in part, in any of the following situations: (i) pending the outcome of any civil or criminal proceedings or relevant investigations which relate to the Complaint, (ii) due to the

ill-health of the Respondent or of a material witness which, in the opinion of the Assessor, having taken such professional advice or considered such evidence as they consider appropriate, prevents the Respondent or material witness from taking part in such proceedings; or (iii) for any other reason which the Assessor deems appropriate.

- (2) Once a sist has been imposed, it shall be presumed to continue until such time as the circumstances leading to its imposition no longer pertain, but the appropriateness of the sist continuing shall be subject to review, upon request by the Respondent, at three-monthly intervals from the date of its imposition. Each such review shall be undertaken and decided upon by the Convener, whom failing the Vice-Convener, of the Legal Questions Committee, who shall have power to lift the sist upon cause shown by the Respondent. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.

7. The Discipline Tribunal shall be variously constituted as follows:

- (1) In the circumstances of a matter proceeding under Part 8 (*Disciplinary Proceedings*), it shall mean a body of up to five persons, of whom at least one is a Minister or Deacon and one is an Elder, three persons being selected from the Judicial Panel together with a Convener and a Vice-Convener appointed in terms of section 16 of the Appeals Act (Act I 2014). In this case the quorum of the Tribunal shall be three persons, one of whom must be the Convener, or
- (2) In the circumstances of a matter proceeding under Part 9 (*Accelerated Procedure*) it shall mean a body of up to three persons, comprising one Minister and one Elder selected from the Judicial Panel, together with a Convener appointed in terms of section 16 of the Appeals Act (Act I 2014). In this case the quorum of the Tribunal shall be two persons, one of whom must be the Convener.

The Solicitor of the Church shall normally serve as Secretary to the Discipline Tribunal but may appoint a Depute to act in his or her place in any particular case. The Secretary shall not be a member of the Discipline Tribunal.

8. Where an Assessor becomes unable to continue with consideration of and/or investigation of and/or disciplinary proceedings in respect of a Disciplinary Complaint, then a new Assessor shall be appointed and the consideration and/or investigation and/or disciplinary proceedings shall continue, subject to all time limits which apply being recalculated to start again as if the Referral had been made on the date on which the new Assessor is appointed.
9. When, in the course of proceedings under the Local Church Review Act (Act I 2011) or the Congregations in an Unsatisfactory State Act (Act I 1988), the Presbytery receives a Disciplinary Complaint indicating that a Disciplinary Offence may have been committed by a Respondent, it may proceed in one of the following ways: (i) it may proceed simultaneously in terms of this Act, or (ii) it may resolve to initiate proceedings under this Act following the completion of the existing proceedings, or (iii) it may resolve to sist the existing proceedings and initiate proceedings under this Act.

## **Part 2 THOSE SUBJECT TO DISCIPLINE IN TERMS OF THIS ACT**

10. The following shall be subject to discipline in terms of this Act:

- (1) Ministers of Word and Sacrament;

- (2) Licentiates;
- (3) Graduate Candidates;
- (4) Deacons;
- (5) Readers;
- (6) Candidates and Probationers in training for the Ministry of Word and Sacrament and Diaconate as referred to in the Selection and Training for Full-Time Ministry Act (Act X 2004), the Deacons Act (Act VIII 2010) and the Ordained Local Ministry Act (Act IX 2011);
- (7) Candidates in training for the Readership as referred to in the Readership Act (Act XVII 1992);
- (8) Elders;
- (9) Office-Bearers;
- (10) Persons holding Certificates of Eligibility issued under the Admission and Re-admission of Ministers Act (Act IX 2002).

### **Part 3 JURISDICTION**

- 11. It is declared that any proceedings under this Act are part of the exclusive jurisdiction of the Church and in accordance with the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual, as hereby interpreted by the Church.
- 12. Where an individual against whom an allegation made in terms of this Act is an employee of any congregation or any Court or Standing Committee of the Church, nothing in this Act shall prejudice the application of civil employment law.
- 13. For the avoidance of doubt, it is declared that nothing in this Act shall reduce the general power of Presbytery to impose an Administrative Suspension on any individual subject to its jurisdiction in terms of this Act, at any time.
- 14.
  - (1) Proceedings under this Act shall be initiated by the Presbytery having jurisdiction in terms of this section.
  - (2) Ministers of Word and Sacrament and Deacons shall be subject to the jurisdiction of the Presbytery with which they are registered on the Register of Ministry created by the Registration of Ministry Act (Act II 2017).
  - (3) Licentiates shall be subject to the jurisdiction of the Presbytery within the bounds of which is the congregation of which they are a member, which failing, the Presbytery of Edinburgh and West Lothian.
  - (4) Candidates and Probationers in training for the Ministry of Word and Sacrament and Diaconate shall be subject to the jurisdiction of the Presbytery which is supervising them, in terms of sections 18 and 19 of the Selection and Training for Full-Time Ministry Act (Act X 2004) (in the case of the Diaconate, as applied by section 3 of the Deacons Act (Act VIII 2010)), and sections 13 and 14 of the Ordained Local Ministry Act (Act IX 2011).
  - (5) Candidates in training for the Readership shall be subject to the jurisdiction of the Presbytery which appoints the regent referred to in section 2(e) of the Readership Act (Act XVII 1992).
  - (6) Graduate Candidates shall be subject to the jurisdiction of the Presbytery which issued their Graduate Candidate's Certificate in terms of section 22 of the Selection and Training for Full-Time Ministry Act (Act X 2004).

- (7) Elders and Office-Bearers shall be subject to the jurisdiction of the Presbytery within the bounds of which is the congregation of which they are a member or in which they serve as an Office-Bearer.
  - (8) Readers shall be subject to the jurisdiction of the Presbytery upon the Roll of which they appear.
  - (9) Persons holding Certificates of Eligibility issued under the Admission and Re-admission of Ministers Act (Act IX 2002) shall be subject to the jurisdiction of the Presbytery within the bounds of which they normally reside, which failing, the Presbytery of Edinburgh and West Lothian.
15. Should a Disciplinary Complaint come to the notice of a Presbytery other than that having jurisdiction in terms of this Part 3, it shall communicate the same to the Presbytery having jurisdiction, together with all information pertaining thereto in its possession.

#### **Part 4 DISCIPLINARY OFFENCES**

16. "Disciplinary Offence" shall mean:

- (1) conduct which is declared censurable by the Word of God;
- (2) a breach of an Act, Regulation or Instruction of the General Assembly;
- (3) a breach of an established custom of the Church;
- (4) a breach of an order or instruction of any court of the Church;
- (5) a breach of a Respondent's vows of ordination;
- (6) a refusal to accept, or an attempt to subvert, the authority of any court of the Church or Standing Committee;
- (7) conduct unbecoming the office held by the Respondent in the Church or likely to reflect adversely on the Church or bring its name into disrepute;
- (8) conduct which is not in conformity with the law or practice of the Church and which constitutes direct or indirect discrimination in terms of the Equality Act 2010;
- (9) Harassment or Victimisation as defined in sections 1(20) and 1(37) respectively;
- (10) dishonest or deceitful behaviour;
- (11) Bullying;
- (12) conduct which results in the placing of the name of a Respondent on the Sex Offenders' Register or the Respondent's inclusion on the Children's List and/or the Adults' List kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007;
- (13) failure by an individual to advise the Church's Safeguarding Service of (a) any act, default or omission, or (b) any circumstances arising, bearing upon that individual's suitability to undertake Regulated Work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007;
- (14) other than as permitted in terms of this Act, the issuing by any person subject to this Act of any form of statement about, or details concerning, the alleged Disciplinary Offence, or participating in any interview or discussion with the media or publishing any material on social media regarding an alleged Disciplinary Offence, in all cases after the Presbytery receives notice of an alleged Disciplinary Offence and until the conclusion of any Disciplinary Proceedings and any appeals relating thereto; and
- (15) disobedience of an Instruction issued under section 40.

#### **Part 5 REFERRAL**

17. (1) Whenever a Disciplinary Complaint comes to the notice of the Presbytery, it shall be considered by the Presbytery Clerk (or the Alternative Contact), whom failing, any member of Presbytery holding delegated powers from Presbytery to act for the Presbytery in respect of the Complaints Procedure or otherwise holding delegated powers from Presbytery to deal with matters of discipline.
- (2) If, following consideration in terms of section 17(1), it is decided that the Disciplinary Complaint should be considered under this Act, the Presbytery shall appoint an Assessor and shall refer the consideration of such Disciplinary Complaint to such Assessor. Before making a decision that the Disciplinary Complaint should not be considered under this Act, the Presbytery Clerk shall seek the advice of the Principal Clerk.
- (3) Consideration shall also be given at this stage as to whether or not an Administrative Suspension should be imposed on the Respondent in terms of Part 6.
- (4) Where there is a Complainer, the Presbytery Clerk shall send written acknowledgement of the Disciplinary Complaint to the Complainer within seven (7) days of its receipt.
- (5) Once a Referral has been made, the following restrictions shall apply to a Respondent (with the exception of those Respondents referred to in section 10(8) or 10(9)) until such time as proceedings under this Act are finally disposed of:
  - (a) the Respondent shall not be entitled to demit his or her status or to resign from a Church appointment; a Minister of Word and Sacrament or a Deacon shall be permitted to demit his or her charge or to resign from a Church appointment, but if he or she does so, he or she shall remain under the jurisdiction of the Presbytery until proceedings under this Act are finally disposed of; and
  - (b) the FAPLT may not issue an extract of the Respondent's entry in the Register of Ministry if he or she seeks to leave the jurisdiction of the Presbytery.
- (6) The Presbytery Clerk shall write to the Respondent to confirm that a Disciplinary Complaint has been received, advising as to its general nature and confirming that a Referral has been made and in addition, shall confirm the matters referred to in sub-paragraphs (a) and (b) above of subsection (5). The Presbytery Clerk shall, at the same time, send to the Respondent copies of (a) this Act and (b) the Guidance for Respondents prepared in terms of Part 16 and shall notify the Head of the Faith Action Programme in writing that the Referral has been made (save where the Respondent is one referred to in section 10(8) or 10(9)).
- (7) Notwithstanding subsection (5) above, a Respondent may, provided that no appeal is being taken to the Judicial Commission and provided also that the procedure set out in section 33 of Act VIII 2003 is followed, demit status at any time after the Discipline Tribunal issues a decision on Censure in the Respondent's case.
- (8) At the same time as appointing the Assessor, the Presbytery shall make suitable arrangements for the provision of pastoral support for (i) the Respondent and his or her family, (ii) any Complainer(s), (iii) any witnesses in respect of the Disciplinary Complaint residing within the bounds of the Presbytery, (iv) the congregation and (v) any Office-Bearers involved in the Disciplinary Complaint.

The Presbytery may call upon a neighbouring Presbytery and/or the Head of the Faith Action Programme to assist in the provision of pastoral support. The Presbytery Clerk shall make a written report on the arrangements, so made, to the Assessor, when appointed.

- (9) In the Assessor's report to the Presbytery in terms of section 19(1), the Assessor shall comment on the arrangements for pastoral support made by the Presbytery in terms of section 17(8), providing an assessment as to their adequacy and may raise any inadequacy with Presbytery during the course of his or her consideration of the Referral and may make suggestions as to how such inadequacy could be rectified.
  - (10) Except insofar as provided herein, once an Assessor has been appointed, the Presbytery shall have no further part in the proceedings.
18. (1) The Presbytery shall also appoint an Adviser to work with the Assessor on the Disciplinary Complaint. The Adviser shall provide support to the Assessor and may be present at any interview conducted by the Assessor. Before taking any decisions under this Act, the Assessor shall consult with the Adviser.
- (2) The Assessor will consider the Disciplinary Complaint and, if necessary, obtain any additional information, to allow the Assessor to decide whether the Disciplinary Complaint falls into one or more of the following categories:
- (a) it is in a form which cannot sensibly be responded to, or
  - (b) it is otherwise an abuse of process, or
  - (c) it is frivolous or vexatious, or
  - (d) it has no reasonable prospect of providing grounds for disciplinary action in terms of this Act, or
  - (e) it would be more appropriately dealt with by the Presbytery under the Complaints Procedure, or
  - (f) it is suitable to be dealt with in terms of the Alternative Dispute Resolution Processes Act 2014 (Act VI 2014) or otherwise by mediation, conciliation or facilitated conversation or similar processes, or
  - (g) the Presbytery has no jurisdiction to consider the Disciplinary Complaint, or
  - (h) it cannot be pursued because a Complainer is not willing to be identified to the Respondent, or is not willing to disclose a document to the Respondent and there is no other evidence supporting the Disciplinary Complaint.
19. (1) Within thirty five (35) days of the receipt of the Referral by the Assessor, he or she shall decide whether the Disciplinary Complaint satisfies any of the criteria set out in section 18(2). The Assessor shall confirm this in a report sent to the Presbytery, the Complainer (if any) and the Respondent. Where the Assessor decides that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2), he or she shall also state whether the Disciplinary Complaint should be considered by Presbytery in terms of the Complaints Procedure. When the Assessor decides that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2) the Assessor shall, at the same time advise the Presbytery and the Complainer of their right to a Procedural Review.
- (2) For the avoidance of doubt, a decision by the Assessor that the Disciplinary Complaint satisfies any of the criteria set out in section 18(2) shall not be subject to appeal or dissent and complaint or any other form of review, other than a Procedural Review carried out by a Reviewer.



- (3) With respect to a Procedural Review the following will apply:
- (a) A Procedural Review must be requested by the Presbytery or the Complainer within fourteen (14) days of the date upon which the Assessor reported his or her decision to the Presbytery and the Complainer.
  - (b) A Procedural Review can be sought only on one or both of the following grounds: (a) that there was an irregularity in the process followed by the Assessor which materially influenced his or her decision; and/or, (b) that his or her decision was materially influenced by incorrect material fact.
  - (c) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief, specific, numbered propositions, the grounds in subsection (b) above relied on by the Presbytery or the Complainer.
  - (d) In the event that the Reviewer determines that one or both of the foregoing grounds have been established, he or she shall order a new Referral to be made to a different Assessor.
  - (e) In the event that the Reviewer determines that neither of the foregoing grounds has been established, the decision of the Assessor shall be deemed to have become final.
  - (f) The decision of the Reviewer as regards the Procedural Review shall be final and not subject to appeal, dissent and complaint or any other form of further review.

## **Part 6 ADMINISTRATIVE SUSPENSION**

20. (1) At any time after a Disciplinary Complaint comes to the notice of the Presbytery, the Presbytery, or any Committee or individuals holding delegated powers from Presbytery so to do, shall be entitled, at its or their discretion, to impose an Administrative Suspension on the Respondent. This entitlement shall be without prejudice to the general power of Presbytery described in section 13.
- (2) In the event that the Respondent is a Minister and he or she has been Administratively Suspended, the Presbytery shall appoint an Interim Moderator to the Respondent's charge.
- (3) Without prejudice to section 20(1), where the Respondent is a Candidate or Probationer in terms of section 10(6) or 10(7), the FAPLT may impose an Administrative Suspension on the Respondent in respect of their candidature or Probationer training, as the case may be, pending a decision in terms of section 20(1) by the Presbytery or any Committee or individuals holding delegated powers from Presbytery, as the case may be. The Head of the Faith Action Programme shall advise the relevant Presbytery of any Administrative Suspension so imposed.
- (4) If the Respondent falls within section 10(1), (2), (3), (4), (5), (6), (7) or (10) then the Presbytery shall advise the Head of the Faith Action Programme of the fact that an Administrative Suspension has been imposed.
- (5) Once an Administrative Suspension has been imposed, it shall be presumed to continue until such time as the circumstances leading to its imposition no longer pertain; but the Administrative Suspension shall be subject to review, upon request by the Respondent or the Assessor, at three-monthly intervals from the date of its

imposition. Each such review shall be undertaken and decided upon by the Convener, whom failing the Vice-Convener, of the Legal Questions Committee, who shall have power to lift the Administrative Suspension upon cause shown by the Respondent or the Assessor. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.

## **Part 7 INVESTIGATORY PROCEEDINGS**

21. (1) If the Assessor, following consideration in terms of section 19(1) decides to commence Investigatory Proceedings, he or she shall:
  - (a) intimate in writing to the Respondent the terms of the Disciplinary Complaint and the nature of the evidence purported to exist in support of it;
  - (b) invite the Respondent to provide a written answer to the Disciplinary Complaint to the Assessor within fourteen (14) days of the Respondent's receipt of such intimation, always provided that the Respondent shall not be obliged to answer; and
  - (c) give notice to the Presbytery of the commencement of Investigatory Proceedings.
  
22. (1) Within twenty eight (28) days of the Assessor's receipt of the Respondent's written answer to the Disciplinary Complaint (or if no such written answer is received, within thirty five (35) days of the likely receipt by the Respondent of the Assessor's invitation in terms of section 21(1)(b)), the Assessor must decide which one of the following courses of action to take:
  - (a) to determine that the Respondent has no case to answer in terms of this Act;
  - (b) to offer the Respondent, with the consent and concurrence in writing, of a Convener (or Vice-Convener) of the Discipline Tribunal an opportunity to consent to a Censure, available for acceptance for a period of twenty eight (28) days, in order to conclude the Investigatory Proceedings, the Respondent having received legal advice; or
  - (c) to continue to investigate the Disciplinary Complaint.
  - (2) In the case of a decision by the Assessor in terms of section 22(1)(a), such decision shall not be subject to appeal or dissent and complaint or any other form of review, other than a Procedural Review carried out by a Reviewer on the same basis as set out in section 19(3). The Assessor shall confirm any decision in terms of section 22(1)(a) in a report sent to the Presbytery, the Complainer (if any) and the Respondent, which report shall include a statement of the reasons for his or her decision. In intimating his or her decision and the reasons, the Assessor shall advise the Presbytery and the Complainer (if any) of their right to a Procedural Review.
  
23. An offer of a Censure with consent, in terms of section 22(1)(b) shall be open for acceptance by the Respondent within a period of twenty eight (28) days from the date of issue and if not so accepted shall be deemed to be refused, in which case the Assessor shall continue to investigate the Disciplinary Complaint in terms of section 22(1)(c). If such an offer is accepted, the Censure with consent shall be recorded as is appropriate, depending on the person and on the type of Censure with consent, according to the general scheme specified in Part 10 and in each case, the recording of the Censure with consent shall conclude the Investigatory Proceedings, subject only to further procedure under Part 13.

24. (1) In the event that the Assessor decides to continue to investigate the Disciplinary Complaint in terms of section 22(1)(c), the Assessor shall carry out such investigations as he or she, in his or her sole discretion, deems necessary to determine whether a Disciplinary Offence may have been committed. Subject to subsection (2), such investigations shall be concluded within thirty five (35) days of the date on which the Assessor's decision, in terms of section 22, is made.
  - (2) The Convener, whom failing the Vice-Convener, of the Legal Questions Committee shall have power, on cause shown by the Assessor or the Respondent, to grant a further period or periods for completion of the investigation. Reasons for the Convener's or Vice-Convener's decision shall be given. In making a decision, the Convener or Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk. No second or subsequent extension shall be granted without the Respondent being given the opportunity to make representations as to whether or not the extension should be granted.
  - (3) In all cases under this Act, the Assessor shall keep a record of the Investigatory Proceedings. The record shall comprise all evidence obtained by the Assessor including witness statements. The interviews conducted by the Assessor shall be digitally recorded.
25. If, in the course of the Investigatory Proceedings, an Assessor becomes aware of further allegations against the Respondent, which may constitute a Disciplinary Offence, then the Assessor shall proceed to consider and, if appropriate, investigate such allegations in terms of this Part.
26. At the conclusion of the Assessor's investigation and before deciding whether to initiate Disciplinary Proceedings under Part 8, the Assessor shall again make known to the Respondent the substance of the Disciplinary Complaint being considered by the Assessor and the nature of the evidence existing in support of it and shall offer the Respondent the opportunity to make any answer thereto, in person or in writing; provided that he or she shall not be obliged to answer.
27. (1) Upon consideration of the Disciplinary Complaint and evidence submitted and of any answers given, the Assessor shall be entitled to resolve that no further investigation shall be carried out and that no Disciplinary Proceedings should be instituted if there is no *prima facie* case to answer. In that event, the Assessor shall confirm this in a report sent to the Presbytery, the Complainer (if any) and the Respondent, which report shall include a statement of the reasons for his or her decision. In intimating his or her decision, the Assessor shall advise the Presbytery and the Complainer (if any) of their right to a Procedural Review.
  - (2) At such time, the Assessor may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in the Record referred to in section 24(3) and will also be reported to the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
  - (3) For the avoidance of doubt, a decision not to initiate Disciplinary Proceedings against the Respondent, in relation to the whole or any part of a Complaint, shall not be subject to appeal or dissent and complaint or any other form of review other than a Procedural Review carried out by a Reviewer in terms of section 19(3).
  - (4) In the circumstances where either (i) no Procedural Review is requested within the time frame applicable and that time frame has expired, or (ii) a Procedural Review

takes place and the decision of the Assessor is upheld, then Presbytery shall thereafter recall any Administrative Suspension imposed in terms of sections 13 or 20.

## **Part 8 DISCIPLINARY PROCEEDINGS**

28. (1) In the event that the Assessor decides to initiate Disciplinary Proceedings, he or she shall prepare (a) a Notice of Complaint setting forth the alleged Disciplinary Offence or Disciplinary Offences (hereinafter referred to as "Charge" or "Charges") in respect of which it is proposed that Disciplinary Proceedings should be commenced, and (b) a summary of the evidence, whether from witnesses, documents or otherwise, that is considered to support the Charge or Charges made.
  - (2) The Notice of Complaint will run in the name of the Presbytery and will be in such form that, in respect of each Disciplinary Offence, there is set out the date(s), time(s) and place(s) of the Disciplinary Offence(s) and the facts necessary to constitute the Disciplinary Offence(s).
  - (3) The Assessor shall also intimate to Presbytery his or her decision to initiate Disciplinary Proceedings.
29. (1) The Assessor shall initiate Disciplinary Proceedings by lodging with the Solicitor of the Church:
    - (a) the Notice of Complaint;
    - (b) a list of the names and addresses of the witnesses to be adduced by the Assessor;
    - (c) a list of the productions to be put in evidence by the Assessor;
    - (d) the summary of the evidence referred to in section 28(1)(b); and
    - (e) a request to the Solicitor to appoint a first diet and cite the Respondent to attend the first diet.
  - (2) The Solicitor of the Church shall notify the Convener and Vice-Convener of the Legal Questions Committee that a Notice of Complaint has been lodged, shall arrange for the selection of a Discipline Tribunal and shall thereafter:
    - (a) fix a date for the first diet, being a date not earlier than fourteen (14) days after the lodging of the Assessor's request under section 29(1)(e); and
    - (b) serve on the Respondent, by both first class and "signed for" post or personally by means of a Sheriff Officer, the items listed at sections 29(a) to (d), and
    - (c) intimate the first diet and a list of the names of those selected to serve on the Discipline Tribunal to the Respondent.

In intimating the date of the first diet, the Solicitor of the Church shall draw to the attention of the Respondent the provisions of section 32 as to failure to appear.
  - (3) In the event that service of the Notice of Complaint has not been timeously or regularly effected, the Solicitor shall:
    - (a) re-serve on the Respondent the items listed at sections 29(a) to (d); and
    - (b) fix a fresh date for the first diet, being a date not earlier than fourteen (14) days after the date of re-service in terms of section 29(3)(a).
30. (1) The first diet will be held before the Discipline Tribunal.
  - (2) At the first diet the Respondent may challenge:
    - (a) the competency or relevancy of the Notice of Complaint; or
    - (b) the constitution of the Discipline Tribunal:

provided that, in respect of any challenge to the competency or relevancy of the Notice of Complaint, intimation of the ground of such challenge must be given to the Assessor and the Secretary to the Discipline Tribunal not later than fourteen (14) days before the diet is due to be held, and any challenge to constitution shall be disposed of immediately, unless the Discipline Tribunal consider that the matter cannot be decided without proof.

- (3) At the first diet the Discipline Tribunal may:
  - (a) adjourn the first diet for any reason;
  - (b) allow the Notice of Complaint to be amended by deletion, alteration or addition, so as to cure any error or defect in it or meet any objection to it, on such conditions as they think fit;
  - (c) sustain or repel any challenge to the competency or relevancy of the Notice of Complaint in whole or in part;
  - (d) defer consideration of such challenge until after proof,
  - (e) deal with any practical and/or procedural matters related to the Notice of Complaint which can usefully and expeditiously be dealt with at the first diet. The Discipline Tribunal shall have the power to make any order or determination which is just and reasonable, which order or determination shall be final.
- (4) After disposal or deferment of any challenge referred to in subsection (2) above, the Respondent shall be required to state whether he or she admits or denies each of the Charges, if any, which remain on the Notice of Complaint.
- (5) Where the Respondent admits all the individual Charges brought, the Discipline Tribunal shall, after hearing and considering any statement by the Assessor and any statement by or on behalf of the Respondent in mitigation, pass such Censure upon the Respondent as appears to it appropriate or discharge the Respondent and shall record its decision in a document signed by the Convener. The provisions of section 37(1) shall apply.
- (6) Where the Respondent denies some, or all, of the Charges brought, the Discipline Tribunal will appoint a date for the proof of those charges which are denied and defer consideration of the question of Censure in respect of any Charges which are admitted, until close of the proof; provided that the Assessor may:
  - (a) accept any denial of any individual Charge; or
  - (b) accept an admission of an individual Charge in part;in which case the proof will be confined to those Charges which are denied and which denial is not accepted by the Assessor.
- (7) The date appointed for proof shall be not less than twenty eight (28) days nor more than fifty six (56) days after the first diet or any adjournment thereof, but the Discipline Tribunal shall have power, upon cause shown by either party, to fix a date outwith that period, or to adjourn the proof diet.
- (8) Where the Discipline Tribunal has appointed a date for proof, it may make an Order requiring the Respondent to intimate to the Secretary to the Discipline Tribunal and to the Assessor, within such period as they shall specify, a list of the names and addresses of the witnesses to be adduced and a list with copies of the productions to be put in evidence by him or her.
- (9) Where (a) the Respondent has intimated in writing to the Assessor and to the Secretary to the Discipline Tribunal (i) that there is no challenge in terms of section 30(2) and (ii) that the Charge or Charges on the Notice of Complaint are all denied, and (b) both the Assessor and the Respondent intimate in writing to the Secretary to the Discipline Tribunal that there are no other matters which they wish to raise at the First Diet, it shall not be necessary to hold a First Diet and instead the Convener, Vice-Convener and Secretary of the Discipline Tribunal shall appoint a

date for the proof of the Charge or Charges and make any Order in terms of section 30(8).

31. All proceedings in terms of Part 8 or Part 9 shall take place in public except (a) where either the Assessor or the Respondent request that and show cause why, the hearing, or part thereof, should be held in private; or (b) where the hearing of evidence from any person, or narration of facts thereof, in the opinion of the Discipline Tribunal, is likely to prejudice morals or public order, to affect adversely the interests of justice or the private life of the parties or in any other special circumstances where publicity would prejudice the interests of justice, provided that, in any event, the Discipline Tribunal shall restrict publicity only to the extent which it deems to be strictly necessary.
32. If a party fails to attend or be represented at the time and place fixed for the proof, without cause shown, the Discipline Tribunal may (a) adjourn the proof to a later date; (b) if that party is the Assessor, dismiss the Notice of Complaint; or (c) if that party is the Respondent, proceed to hear the proof in his or her absence, to reach a decision thereon and if appropriate, to pass Censure.
33.
  - (1) Witnesses shall be required by the Convener to take the oath or to affirm prior to giving evidence.
  - (2) The proceedings at the proof may be digitally recorded.
  - (3) If produced by either party, the notices issued by the Assessor in terms of section 21(1)(a) and/or section 23 and any answers thereto by the Respondent, shall be admissible in evidence.
  - (4) In subsection (2) "the proceedings at the proof" shall, unless the Discipline Tribunal directs otherwise, mean the whole proceedings to the close of the proof, including, without prejudice to that generality: (a) discussions on all matters arising in the course of the proof and the decision of the Discipline Tribunal on any such matter, (b) the evidence led at the proof, and (c) the speeches of the parties or their solicitors on their behalf.
34. Each party shall be entitled to give evidence, to call witnesses, to question any witness and to address the Discipline Tribunal, provided that the Respondent shall have the right to speak last.
35. Subject to sections 33 and 34, the conduct of the proof shall be in such manner as the Discipline Tribunal considers most appropriate for the determination of the issues before it and to the just handling of the proceedings.
36.
  - (1) No proof shall fail, or the ends of justice be allowed to be defeated, by reason only of any discrepancy between the Notice of Complaint and the evidence.
  - (2) It shall be competent, at any time prior to the decision of the Discipline Tribunal, unless the Discipline Tribunal see just cause to the contrary, to amend the Notice of Complaint by deletion, alteration or addition, so as to:
    - (a) cure any error or defect in it;
    - (b) meet any objection to it; or
    - (c) cure any discrepancy or variance between the Notice of Complaint and the evidence,provided that no amendment to the Notice of Complaint may change the character of the Charge or Charges.
  - (3) If it appears to the Discipline Tribunal that the Respondent may, in any way, be prejudiced in his or her defence on the merits of the Charges by any amendment made under this section, the Discipline Tribunal shall grant such remedy to the Respondent by adjournment, or otherwise, as appears to the Discipline Tribunal to be just.
37.
  - (1) At the close of the proof, the Discipline Tribunal shall give its decision on whether and if so to what extent, each Charge on the Notice of Complaint has been

- established and the decision shall be recorded in a document signed by the Convener, provided that the Discipline Tribunal may take time to consider its decision and adjourn the diet of proof to a later date for that purpose.
- (2) Upon giving its decision and, in the event of any Charge being found to be established or admitted (including, without prejudice to that generality, those Charges admitted and deferred in terms of section 30(6)), after hearing and considering any statement by the Assessor and the Respondent in mitigation, the Discipline Tribunal shall pass such Censure, if any, upon the Respondent as appears to it appropriate according to the circumstances of each charge. In determining the appropriate Censure, no account shall be taken of any prior period of Administrative Suspension.
  - (3) After giving its decision in terms of subsection (1), the Discipline Tribunal shall set forth in a document (a) those findings in fact which it has made and (b) the Censure, if any, which it has imposed, giving reasons for both elements of its decision. The Discipline Tribunal shall also record the majority by which its decision in respect of (i) each Charge, and (ii) Censure, or absolute discharge, was reached.
  - (4) The Secretary of the Discipline Tribunal shall send the documents, referred to in sections 37(1) and 37(3), to each of the parties, the Session Clerk(s) of the congregation(s) concerned, the Presbytery Clerk, the Principal Clerk of the General Assembly and the Head of the Faith Action Programme (save where the Respondent is one referred to in section 10(8) or 10(9)), and shall make them available for public inspection.

#### **Part 9 ACCELERATED PROCEDURE WHERE THE RESPONDENT DESIRES TO ADMIT ALLEGATIONS**

38. (1) If, at any stage of proceedings prior to the service of a Notice of Complaint, the Respondent indicates that he or she wishes to admit all, or any, of the allegations made against him or her, he or she shall be entitled so to intimate to the Assessor. Said admission must be in writing and signed by the Respondent. It should include a statement by the Respondent that he or she has received legal advice on the matter. The admission shall not be accepted by the Assessor in the absence of a statement that legal advice has been received. In the event that the Assessor is willing to accept the said admission, either immediately or after making such other enquiries or investigations he or she considers appropriate, the Assessor shall, as soon as practicable, proceed to adjust and agree a Joint Minute with the Respondent, or his or her solicitor. The said Joint Minute, which shall be signed by or on behalf of both parties, shall set out:
- (a) the Disciplinary Offence or Disciplinary Offences which are admitted;
  - (b) an agreed summary of the material facts; and
  - (c) such other information as it is agreed should be before the Discipline Tribunal to assist it in reaching an appropriate disposal of the case.

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

- (2) The Assessor shall, after signature thereof, transmit the Joint Minute to the Solicitor of the Church, who shall proceed to notify the Convener and Vice-Convener of the Legal Questions Committee and arrange for the selection of a

Discipline Tribunal. The Solicitor shall thereafter, in name of the Tribunal, fix a date for a diet before the Tribunal, being a date not earlier than fourteen (14) days after the date of intimation thereof. The Solicitor shall intimate the said date to the Assessor and the Respondent and his or her solicitor.

- (3) At the said diet, the Discipline Tribunal shall, after hearing and considering any statement by the Assessor and any statement by the Respondent in mitigation, pass such Censure upon the Respondent as appears to it appropriate or discharge the Respondent and shall record its decision, with brief reasons therefor, in a document signed by the Convener. The Tribunal shall be entitled *inter alia* to take into account the fact that an early plea was made and mitigate any Censure as it sees fit. In determining the appropriate Censure, no account shall be taken of any prior period of Administrative Suspension.
- (4) In the event that the Respondent at the diet withdraws or modifies, to any extent, the admission previously made to all, or any, of the Disciplinary Offences, unless this is accepted by both the Assessor and the Tribunal, the diet shall be adjourned and thereafter the case shall proceed, as directed by the Tribunal, in accordance with the other provisions of this Act.

## **Part 10 CENSURES**

39. The Discipline Tribunal shall dispose of all discipline cases as seems appropriate to it. In reaching a decision as to a suitable Censure, it shall not take into account any prior period of Administrative Suspension. It shall, however, take into account any previous Censures imposed on the Respondent by the Discipline Tribunal or any matter, which it considers relevant, in any personal file for the Respondent, held by the FAPLT, which shall be made available to it by the Head of the Faith Action Programme.
40. The Censures available to the Tribunal, in respect of any Respondent, shall comprise the following or any combination thereof:
  - (1) Ministers of Word and Sacrament and Deacons
    - (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
      - (a) the Presbytery and recorded by it in a record apart, and
      - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
    - (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:
      - (a) the Presbytery and recorded by it in a record apart; and
      - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.



- (iii) **Suspension** from the status and functions of ministry either (a) for a fixed period of up to three years<sup>1</sup>, or (b) without limit of time, but subject to a minimum period of suspension. Such suspension shall be reported to the Head of the Faith Action Programme. In all cases, suspension will result in the re-categorisation of the Respondent to Category S in the Register of Ministry and suspension may only be lifted in accordance with section 28 of the Registration of Ministries Act (Act II 2017) upon application by the Respondent. In the event of an individual, who is suspended, having his or her pastoral tie severed, in no circumstances shall he or she be eligible to be re-appointed to the same charge.
- (iv) **Removal** of the status and functions of ministry. Such removal of status shall be reported to the Head of the Faith Action Programme. In accordance with section 34 of the Registration of Ministries Act (Act II 2017), the Respondent's name shall immediately be removed from the Register of Ministry and recorded in List D. In all cases, restoration of status can only be sought through application in accordance with the Admission and Readmission of Ministers Act (Act XIII 2022). No such application may be lodged until a period of at least four years has elapsed since the date of removal of the Respondent's status and functions.

(2) Graduate Candidates

- (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart, and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
- (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart; and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (iii) **Suspension** from status for a specified minimum period of up to three years, subject to restoration by the FAPLT in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The FAPLT shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.
- (iv) **Removal** of status, subject to restoration by the FAPLT in consultation with the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal of such

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<sup>1</sup> This to tie in with the Registration of Ministries Act and the way it deals with those who are out of parish ministry for over three years and who would at that point lose their category "O" registration

status. The FAPLT shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(3) Licentiates

- (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart, and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
- (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart; and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence

- (iii) **Suspension** from the Roll of Licentiates for a specified minimum period of up to three years, subject to restoration by the FAPLT, in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The FAPLT shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.
- (iv) **Removal** from the Roll of Licentiates, subject to restoration by the FAPLT, in consultation with the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal from the Roll. The FAPLT shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(4) Candidates and Probationers

- (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart, and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
- (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (iii) **Suspension** from status for a specified minimum period of up to three years, subject to restoration by the FAPLT in consultation with the Presbytery, upon petition by the Respondent following the expiry of such period. The FAPLT shall take into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.
- (iv) **Removal** of status, subject to restoration by the FAPLT in consultation with the Presbytery, upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed since the date of removal of such status. The FAPLT shall take into account the length of removal and may insist on such discernment, assessment and training processes and placements as it sees fit.

(5) Readers

- (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart, and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.
- (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:
  - (a) the Presbytery and recorded by it in a record apart; and
  - (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (iii) **Suspension** from the status and duties of the Readership for a specified minimum period of up to three years, subject to restoration by the Presbytery (but only with the agreement of the FAPLT) upon petition by the Respondent following the expiry of such period. In considering whether the suspension shall be lifted, the FAPLT shall take into account the length of suspension served and may insist on such discernment, assessment and training processes and placements as it sees fit.
- (iv) **Removal** of the status and duties of the Readership, subject to restoration by the Presbytery (but only with the agreement of the FAPLT) upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed from the date of removal of status and duties. In considering whether the petitioner should be restored to such status and duties, the FAPLT shall take

into account the length of suspension served and may insist upon such discernment, assessment and training processes and placements as it sees fit.

(6) Elders and other Office Bearers

(i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart, and
- (b) the Presbytery and recorded by it in a record apart.

(ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

(iii) **Suspension** from membership of a Kirk Session and from holding any other office within a congregation for a specified minimum period of up to three years, subject to restoration by the Presbytery, with the agreement of the Kirk Session, upon petition by the Respondent following the expiry of such period.

Such suspension shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

An Elder, having been restored by Presbytery following suspension and being invited to become a member of another Kirk Session (i.e. not the one from which he/she was suspended), shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her suspension and may only be so admitted if the Kirk Session in question then agrees to proceed.

(iv) **Removal** from the status and office of Elder, subject to restoration by the Presbytery with the agreement of the Kirk Session upon petition by the Respondent. No such petition may be lodged until a period of at least four years has elapsed from the date of removal of status and office.

Such removal shall be reported by the Tribunal to:

- (a) the Kirk Session, and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

A person, having had the status of Elder restored following removal and being invited to become a member of another Kirk Session (i.e. not the one from which he/she was removed) shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her removal. They shall not accept such an invitation until a period of at least four years has elapsed since their removal from such status.

- (v) In the case of Office Bearers who are not Elders, **Removal** from a particular office held.

Such removal shall be reported by the Tribunal to:

- (a) the Kirk Session and recorded by it in a record apart; and
- (b) the Presbytery and recorded by it in a record apart.

An Office Bearer who is not an Elder and who is subsequently invited to take office in another congregation, shall inform both the Session Clerk and the Presbytery Clerk of the circumstances of his/her removal and may only be appointed to that office if the Kirk Session in question then agrees to it.

(7) Persons holding Certificates of Eligibility

- (i) **Reprimand**, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct. Such reprimand shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

- (ii) **Instruction** regarding training, counselling, mentoring or such other course of action as the Discipline Tribunal shall consider appropriate. Such instruction shall be reported by the Tribunal to:

- (a) the Presbytery and recorded by it in a record apart; and
- (b) the Head of the Faith Action Programme and recorded by him or her in a personal file for the Respondent.

Disobedience of an Instruction shall constitute a Disciplinary Offence.

- (iii) **Removal** of the Certificate of Eligibility, subject to grant of a new Certificate of Eligibility in terms of the Admission and Readmission of Ministers Act (Act XIII 2022). Such removal shall be reported by the Tribunal to the Head of the Faith Action Programme. No application for a new Certificate of Eligibility may be lodged until a period of at least four years has elapsed from the date of removal of the previous Certificate of Eligibility.

**Part 11 DISCIPLINE TRIBUNAL: ADDITIONAL POWERS AND RULES OF PROCEDURE**

41. Where, in the view of the Discipline Tribunal, it is necessary to do so in the interests of justice, the Tribunal shall have power to order either party to produce, within such period as the Tribunal shall consider reasonable, any document or other article in that party's possession and any such document or other article shall be a Production in the proceedings and may be founded upon. Such a power shall be exercisable at any time up to the conclusion of the Proof.

42. The Discipline Tribunal may relieve a party from the consequences of a failure to comply with a provision of this Act shown to be due to mistake, oversight or other excusable cause, on such conditions as the Tribunal thinks fit.
43. The Discipline Tribunal shall have power to make regulations concerning the practice and procedure to be followed in any proceedings brought before the Discipline Tribunal, in terms of this Act, provided that such regulations shall be laid before and be subject to alteration, revocation, amendment or modification by the General Assembly.
44. No member of the Discipline Tribunal shall participate in any proceedings brought by a Presbytery of which he or she is a member or within the bounds of which there is a congregation of which he or she is a communicant member. This section shall not apply to the Solicitor of the Church.
45. Any decision of the Discipline Tribunal may be taken by a majority of its members.

## **Part 12 APPEALS**

46. (1) If either the Assessor or the Respondent is dissatisfied with any decision of the Discipline Tribunal, they may appeal to the Judicial Commission in terms of the Appeals Act (Act I 2014). No right of appeal or dissent and complaint shall be allowed in respect of any act or decision done or taken in terms of this Act, otherwise than in accordance with the provisions of this Act or the Appeals Act (Act I 2014).
- (2) In the case of any appeal against the severity of Censure, taken by any party, it shall be open to the Judicial Commission to vary the Censure in the direction of greater severity or greater leniency. In varying any Censure, no account shall be taken by the Judicial Commission of any prior period of Administrative Suspension.

## **Part 13 IMPLEMENTATION OF DECISION/CENSURE AT PRESBYTERY**

47. The Presbytery shall meet within not less than twenty-one (21) and not more than thirty-five (35) days after receiving intimation of the written decision of the Discipline Tribunal and shall implement the decision of the Discipline Tribunal. The Presbytery shall similarly meet to take appropriate steps after a Respondent accepts a Censure with consent. If the Respondent is a parish minister:
  - (1) In the event that the decision has not involved Judicial Suspension or removal from office, it shall (a) lift any Administrative Suspension upon the individual concerned; (b) relieve the Interim Moderator of duty; and (c) undertake such steps in relation to other individuals and superintendence of its members and congregations as it finds necessary.
  - (2) In the event that the decision has involved a period of Judicial Suspension of less than six months, the Presbytery shall, at its meeting, confirm the appointment of an Interim Moderator or make a new appointment and shall undertake such steps against other individuals and superintendence of its members and congregations as it finds necessary.
  - (3) In the event that the decision has involved a period of Judicial Suspension of six months or more, or the removal of status of the Respondent, then: (i) the pastoral tie shall be severed; (ii) any parish of which the Respondent was minister shall be deemed to have become vacant on the date on which the written decision of the Discipline Tribunal was issued and (iii) any other ordained appointment which the

Respondent held shall terminate on that date. The Presbytery shall, at its meeting, confirm the foregoing matters and it shall also confirm the appointment of an Interim Moderator or make a new appointment and shall undertake such steps against other individuals and superintendence of its members and congregations as it finds necessary.

In the event of an appeal being taken to the Judicial Commission against the decision of the Discipline Tribunal, (a) a Respondent, who is a parish minister, shall be entitled to remain in occupation of the manse pending the outcome of the appeal, and (b) the Presbytery shall meet again not less than twenty-one (21) and not more than thirty-five (35) days after receiving intimation of the written decision of the Judicial Commission and shall implement the decision of the Judicial Commission. The foregoing sections of this section 47 shall then apply *mutatis mutandis*. Where the decision of the Judicial Commission involves a change to a Censure imposed on a Respondent, who is a parish minister, (a) the Presbytery shall implement the foregoing sections of this section 47 so far as practicable and may seek the advice of the Principal Clerk as to dealing with any practical consequences of the Judicial Commission's decision, and (b) where that change is from a Judicial Suspension of six months or more or a removal of status to a Judicial Suspension of less than six months such that the pastoral tie would not have been severed, then the Respondent shall be entitled to be compensated for stipend which should have been paid to him or her for the period from the date of the Discipline Tribunal's decision until the earlier of (a) six months after the date of the Judicial Commission's decision and (b) the date upon which the Respondent takes up remunerated employment or office.

#### **Part 14 REPRESENTATION**

48. The Assessor and the Respondent may be represented by a solicitor or counsel at any stage of the Investigatory Proceedings, Disciplinary Proceedings or appeal.

#### **Part 15 EXPENSES**

49. A Respondent shall be entitled to apply for financial assistance towards the costs of legal representation (a) where a Censure with consent is being accepted, and (b) in the conduct of Disciplinary Proceedings under Part 8 and any appeal following thereon, in each case in terms of the Legal Aid in Disciplinary Proceedings Regulations (Regulations I 2018).

#### **Part 16 GUIDANCE ON THE IMPLEMENTATION AND OPERATION OF THIS ACT**

50. The Legal Questions Committee shall issue Guidance on the implementation and operation of this Act, which shall be reviewed by it, from time to time.

#### **Part 17 ADMINISTRATIVE SUPPORT FOR ASSESSORS**

51. In cases where administrative assistance is provided to an Assessor, any cost incurred will normally require to be met by the Presbytery in question, although in cases where a Presbytery does not hold sufficient funds, application may be made via the Principal Clerk to the Legal Aid Fund.

#### **Part 18 COMMENCEMENT DATE AND SAVING PROVISIONS**

52. This Act shall come into force on 18 May 2019. Where a Special Committee of Presbytery was appointed under Act III 2001, Act IV 2007, Act V 2007 or Act I 2010 prior to 18 May 2019, such a matter shall continue until final disposal (including any appeal) in accordance with the law in force immediately before 18 May 2019. Otherwise all disciplinary matters, whether new or ongoing, shall from 18 May 2019 be dealt with under the provisions of this Act. Any disputes as to what that shall mean in practice for any particular matter shall be resolved by the Convener and Vice-Convener of the Legal Questions Committee, upon application by any of the Special Committee, an Assessor or the Respondent, as the case may be, and the decision of the Convener and Vice-Convener shall be final and binding. In making such decision, the Convener and Vice-Convener of the Legal Questions Committee shall first consult with the Solicitor of the Church and the Principal Clerk.

## **Part 19 CONSEQUENTIAL AMENDMENTS AND REPEALS**

53. With effect from the date of passing of this Act, other Acts of the General Assembly shall be amended or repealed as follows:

### **ACT X 1932 (Election and Admission of Elders and Deacons)**

*After the first sentence of section 5 add:*

“As part of this process, the Kirk Session shall require all elders-elect to confirm that they have not previously been ordained as an elder in the Church of Scotland and then resigned that status or had that status judicially removed.”

### **ACT I 1988 (Congregations in Unsatisfactory State)**

*Delete the second sentence of section 17 and substitute “The procedure shall, except as herein provided, be as in section 46 of the Discipline Act (Act ZZ 2019).”*

### **ACT III 2000 (Church Courts Act)**

*In section 37(1), delete “Act I 2010” and substitute “Act ZZ 2019”.*

### **ACT III 2001 (Discipline of Ministry)**

*This Act is to be repealed save that it shall remain in force for matters where a Special Committee of Presbytery was appointed prior to [relevant date] – ie date of passing of Overture at GA 2019*

### **ACT VI 2002 (Co-operation between Presbyteries)**

*In section 2, add at the end “and Act ZZ 2019”.*

### **ACT IX 2002 (Admission and Re-admission of Ministers Act)**

*In section 4(2), after “Act III 2001 (as amended)” add “or Act ZZ 2019”.*

### **ACT VIII 2003 (Vacancy Procedure)**

1. *In section 3(b), add at the end “or section 40 of Act ZZ 2019”.*

2. *In section 18(6) add at the end “or the Discipline Act (Act ZZ 2019).”*

### **ACT X 2004 (Selection and Training for Full-Time Ministry)**

*At the start of section 23, add:*



“Subject always to the provisions of the Discipline Act (Act ZZ 2019), which shall apply in respect of a Disciplinary Complaint (as that term is defined in the Discipline Act) relating to a Candidate, Probationer or Graduate Candidate (as those terms are used in this Act),”

**ACT IV 2007 (Protection against Bullying), ACT V 2007 (Protection against Discrimination) and ACT I 2010 (Discipline of Elders, Readers and Office-Bearers)**

*These Acts are to be repealed save that they shall remain in force for matters where a Special Committee of Presbytery was appointed prior to [relevant date] – ie date of passing of Overture at GA 2019*

**ACT IX 2011 (Ordained Local Ministry)**

*At the start of section 18, add:*

“Subject always to the provisions of the Discipline Act (Act ZZ 2019), which shall apply in respect of a Disciplinary Complaint (as that term is defined in the Discipline Act) relating to a Candidate, Probationer or Graduate Candidate (as those terms are used in this Act),”

**ACT I 2014 (Appeals)**

1. *Add a further definition to section 1, “Definitions and Interpretation” as follows:*

““Discipline Tribunal” means a Discipline Tribunal constituted under the provisions of the Discipline Act (Act ZZ 2019).

2. *Delete the existing section 4(3) and substitute the following;*

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

- (i) Appeals under the Discipline of Ministry Act (Act III 2001), the Protection against Bullying Act (Act IV 2007), the Protection against Discrimination Act (Act V 2007), the Discipline of Elders, Readers and Office-Bearers Act (Act I 2010) and the Discipline Act (Act ZZ 2019), being appeals against the decisions of the Presbyterial Commission and of Discipline Tribunals in discipline cases, except in matters of doctrine;
- (ii) Appeals in all cases arising under the Congregations in an Unsatisfactory State Act (Act I 1988); and
- (iii) Appeals in Personal Cases.

For the avoidance of doubt, the Judicial Commission shall not hear appeals to the Ministries Appeal Panel in accordance with Act VI 2007.”

3. *Delete the existing Part 3 and substitute the following:*

**“PART 3: THE JUDICIAL COMMISSION**

**14. Appointment of members of the Judicial Panel**

(1) There shall be a pool of persons, known as the Judicial Panel, from which there shall be drawn the persons to serve on the Discipline Tribunal and the Judicial Commission. Members of the pool may also serve as Reviewers under the Discipline Act (Act ZZ 2019).

(2) The Judicial Panel shall comprise twenty people being ministers, elders and deacons nominated by the Nomination Committee and appointed by the General Assembly. All members of the Judicial Panel shall be qualified to practise as lawyers or shall be experienced in the law and practice of the Church.

(3) The members of the Judicial Panel shall initially be appointed for a term of four years, and shall be eligible for reappointment for further terms of four years.

(4) In the event of a member of the Judicial Panel approaching the end of their current term of appointment and not wishing to be reappointed but being then engaged in the hearing of a case or an appeal, he or she shall continue in office, but only until the Discipline Tribunal or

the Judicial Commission has recorded its decision in the case or appeal in question, as the case may be.

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

#### **15. Constitution of the Judicial Commission**

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

- (i) Subject to the provisions of section 23(1) three persons, including at least one minister or deacon and one elder, all selected at random from the Judicial Panel; and
- (ii) A Convener and a Vice-Convener, from those appointed under section 16 below.

No person who has been selected for the Discipline Tribunal for a particular matter shall thereafter be selected for the Judicial Commission for the same matter.

#### **16. Conveners & Vice-Conveners of the Discipline Tribunal and the Judicial Commission**

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

(2) Each sitting of the Discipline Tribunal shall be chaired by a Convener so appointed, or by a Vice-Convener so appointed when one is required according to the Discipline Act (Act ZZ 2019).

(3) Each sitting of the Judicial Commission shall be chaired by either a Convener or a Vice-Convener so appointed.

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

#### **17. Quorum**

The quorum of the Judicial Commission shall be three persons.

#### **18. Sittings**

Sittings of the Judicial Commission shall be called by the Principal Clerk.

#### **19. Report to the General Assembly**

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

#### **20. Relation to Legislation**

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

4. *In paragraph 16.1 of Schedule 2, after “Act III 2001” add “, the Discipline Act (Act ZZ 2019) and the Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018)”*

#### **ACT II 2017 (Registration of Ministries)**

1. *In sections 11, 12 and 13, in the wording for category S, after “Discipline of Ministry Act (Act III 2001)” add “or the Discipline Act (Act ZZ 2019)” and after “Act III 2001” in the last line, add “or Act ZZ 2019”.*

2. *In paragraphs 2(1) and 2(2) of Schedule 2, after “(Act III 2001)” add “or section 40 of the Discipline Act (Act ZZ 2019)”.*
3. *In paragraph 2(2)(i) of Schedule 2, after the words “Presbyterial Commission” add “or Discipline Tribunal, as the case may be,”.*