

**LEGAL QUESTIONS COMMITTEE MAY 2023****Proposed Deliverance****The General Assembly:**

1. Receive the Report.
2. Amend Standing Orders as detailed in (i) section 2 and Appendix A of this Report, and (ii) section 4 and Appendices B & C of the Report of the Assembly Business Committee (*Section 2 – Amendments to Standing Orders*).
3. Pass the Church Courts Act as set out in Appendix B to this Report (*Section 3 – Draft Church Courts Act*).
4. Pass an Act amending the Ministers and Deacons in Same Sex Civil Partnerships and Same Sex Marriages Act (Act I 2015) as set out in Appendix D to this Report (*Section 4 – Review of Act I 2015*).
5. Approve the principles for Presbytery Review set out in Appendix E to this Report (*Section 6 – Presbytery Review*).
6. Pass an Act amending the Appeals Act (Act I 2014) as set out in Appendix F to this Report (*Section 12 – Appointments to Legal Bodies*).

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**Report****1. THE COMMITTEE'S REMIT****1.1** This is to:-

- advise on legal questions, whether of Church or civil law, referred to it by the General Assembly, by the Principal Clerk or by any agency of the General Assembly;
- assist in formulating responses to consultations opened by the Scottish and UK Governments and other bodies;
- provide the legislative drafting service for agencies of the General Assembly;
- advise on reform to Church law in terms of practice and procedure;
- report to the General Assembly on proposed amendments to Standing Orders;
- inspect annually records of Agencies of the General Assembly; and
- inspect annually records of Presbyteries.

**1.2** The Covid-19 pandemic has disrupted the normal schedule of inspections of Records of Standing Committees of the General Assembly. Members of the Committee examined the minutes of most Assembly agencies for the calendar years 2020, 2021 and 2022 on Thursday 23<sup>rd</sup> February and Thursday 2<sup>nd</sup> March. In general, these were kept to an acceptable standard and specific matters have been brought to the attention of the relevant body. Some minutes were presented in electronic format and it is recommended that standardisation of this be explored with a view to enabling retrieval in the future of authenticated minutes.

**1.3** The Committee is also tasked with the annual inspection of Presbytery Records and hopes to initiate this work in the next twelve months.

**2. AMENDMENTS TO STANDING ORDERS**

**2.1** The Report of the Assembly Business Committee contains various proposals to amend Standing Orders. The details, including the proposed amended text of the amended Orders, are set out in full in there, in section 4 and Appendices B & C to that Report. In line with Standing Order 127, the section of deliverance to amend Standing Orders is, however, contained in the Report of this Committee.

**2.2** The Committee was asked by the General Assembly of 2022, in consultation with the Faith Nurture Forum, "to review Standing Order 35 on youth representatives in light of General Assembly Reform and also Presbytery Reform and to bring proposals as to an amended Standing Order 35 to the General Assembly of 2023". A proposed amended Standing Order is set out in Appendix A. The Committee reviewed numbers of youth representatives appointed over the last few years and having consulted as required, proposes that in future the new Scottish Presbyteries each be given the right to appoint up to four youth representatives, with the Presbyteries of England, International Charges and Jerusalem permitted to appoint one each. This would be in line with numbers of recent actual appointments. Provision has been made for an alternative allocation should the Presbyteries in the Highlands and Hebrides not be bringing an Overture as to their amalgamation to the Assembly of 2023. The Committee also proposes that if one Presbytery does not use its full allocation, this be capable of being used by another Presbytery which perhaps can exceed their allocation; the Clerks of Assembly will manage this process. Finally the opportunity has been taken to conform the timeframe for advising the Clerks of Assembly of appointments with that for commissioners in terms of SO4 and the date has thus been brought back to 31 January from 31 March.

**3. DRAFT CHURCH COURTS ACT**

**3.1** The 2022 Assembly invited comments from Presbyteries as part of a consultation on the proposed Church Courts Act and the Committee is grateful for written submissions received and the opportunity to engage in person at a conference held by Forth Valley and Clydesdale Presbytery.

**3.2** The proposed Act, amended as a result of consultation, is set out at Appendix B. All suggestions were scrutinised, the majority accepted and amendments to the draft as printed in the 2022 Report are detailed in the Table appearing at Appendix C. This process has permitted a wide range of insights to improve the provisions which now comes to the Assembly.

**3.3** Reference to the Articles Declaratory have been moved to form a preamble to the Act. The current emphasis within the Church on the Five Marks of Mission is echoed and these are included within the text, as is a recognition of the concern of a Kirk Session not only for congregation but parish. Language regarding ministry among young people has been widened, clarity is given on the trustees' report, and powers to rescind a delegation of authority are elaborated. Provisions for calling a Kirk Session meeting, the grounds for doing so and notice periods required are substantially amended and conformed as appropriate with the provisions for Presbytery meetings; also clarity is given on the public nature of Kirk Session meetings held wholly online. The understood practice that an Interim Moderator is generally appointed where a minister is absent, or is anticipated to be so, for more than six weeks is added as is clarity on membership of a Kirk Session by all ministerial members of a Team Ministry. Only members of Presbytery (and not Correspondents) carry trustee obligations.

**3.4** Guidance to accompany the Act is being developed and this will be made available to Session Clerks and Presbytery Clerks in early course. The intention is for this to expand upon certain issues where the Committee thinks this might be helpful, and to signpost other sources of advice.

**3.5** Few critical comments were received regarding substantive matters addressed in the draft Act. Whilst the Committee adheres to its view that the relatively limited alterations to current law and practice do not necessitate remitting the matter to Presbyteries under the Barrier Act, consultation having been effected over the past year, this decision is left to the General Assembly. The Committee therefore proposes in the draft deliverance that the Act simply be passed at this Assembly. The alternative is that the Clerks of Assembly shall be prepared to provide a draft Overture and associated section of deliverance to enable such an Overture to be proposed and, if approved, to commence Barrier Act process which may result in the Act returning to the 2024 Assembly.

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#### **4. REVIEW OF ACT I 2015**

**4.1** The Committee was instructed, in consultation with the Faith Nurture Forum and the Theological Forum, to undertake a review of the Ministers and Deacons in Same Sex Marriages and Civil Partnerships Act (Act I 2015) and to report to a future General Assembly. The Committee primarily considered the practical operation of the Act, noting it is largely confined to the appointment of ministers and deacons in parish contexts and consultation was undertaken as instructed.

**4.2** With mixed sex civil partnership now being a possibility, clarification is made that the Act applies to ministers and deacons in same sex civil partnerships. Pioneer Ministers and Associate Ministers are now specifically included. The Act is extended to cover the appointment by Presbytery of an Interim Moderator with a process to permit a Kirk Session to request that the appointment does not proceed. The requirement to have more than one vote by the same body now appears superfluous and a single vote, with correspondingly streamlined process, is proposed. In the case of a Team Ministry the requirement to vote, possibly in quick succession on the same matter, is removed by stipulating that a vote to depart or not to depart shall subsist for five years and apply to other appointments to the team made during that time, whilst reserving a Kirk Session's right to ask that the matter be reconsidered where a majority (or significant number) of the Kirk Session requests.

**4.3** The proposed amending Act appears in Appendix D.

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#### **5. SAME SEX MARRIAGE**

**5.1** The Office of the General Assembly has been processing applications by ministers and deacons who wish to apply to the Registrar General to be authorised to solemnise same sex marriages, in terms of the Solemnisation of Same Sex Marriages Act (Act VI 2022). Over 100 people have now been authorised and Presbytery Clerks have been notified of the names of those in their Presbytery who are so authorised. Guidance has been prepared and this is available on application to the Presbytery Clerk.

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#### **6. PRESBYTERY REVIEW**

**6.1** The idea of instituting a process of Presbytery Review was first raised on the floor of the General Assembly in 2016 and a number of Presbyteries took part in initial pilots of the scheme during 2017 and 2018. Although the General Assembly of 2019 instructed the Committee to continue the pilots and to prepare legislation, the twin issues of Presbytery Reform and the Covid-19 Pandemic meant that further development was put on hold until the Assembly of 2022 when the Committee was instructed to "*continue with the development of Presbytery Review, bringing the principles of Presbytery Review to the General Assembly of 2023 for Approval before bringing a Presbytery Review Act to the General Assembly of 2024.*"

**6.2** The basic principles remain largely unchanged from what has been brought to the Assembly previously. These are rehearsed here but in addition we bring to the Assembly's attention the fact that the process needs to be fit for purpose at a time when the new Presbyteries are just beginning to find their feet.

**6.3** In broad terms Presbytery Review concerns the exercise of Assembly oversight over the work of Presbyteries. Specifically, the aims are as follows:

- to review Presbytery life and work in terms of the Functions and Responsibilities of Presbyteries as outlined in the Church Courts Act;
- to assist Presbyteries in supporting the life and mission of the local Church and in participating in the life of the national Church;

- to allow the Assembly to hear about the life of the Presbytery being reviewed and to share good practice across the whole Church;
- to help co-ordinate central resourcing of the wider Church;
- to enable action to be taken where there is conflict or non-compliance with Church or civil law.

**6.4** The proposal is to have a cycle of reviews so that each Presbytery is reviewed at least once in every five years with room for the review to be brought forward or to be delayed in the light of any specific circumstances. Generally, the Assembly would receive reports on two or three Presbyteries in any given year.

**6.5** There would be a Presbytery Review Committee comprising the following:

- one representative from each Scottish Presbytery;
- a Convener appointed by the Assembly on the nomination of the Nomination Committee;
- the Assembly Clerks *ex officio*.

**6.6** Each Presbytery Review would be facilitated by a three-person review group who would support the Presbytery in the following:

- describing and explaining the activities, priorities and methodologies of the Presbytery;
- identifying good practice for sharing with the wider Church;
- outlining future plans;
- identifying areas needing further development.

**6.7** The Review Group would check that the Presbytery was complying with Church and civil law and would submit a report to the General Assembly allowing the Assembly to celebrate noteworthy aspects of the Presbytery and to take any action that may be called for by the report.

**6.8** There are parallels with the Local Church Review process and in shaping a Presbytery Review Act it may be useful to mirror the Local Church Review Act (Act I 2011) to enable the two processes to complement each other.

**6.9** The value of the Presbytery Review will be proven in the extent to which the Presbytery as a whole is involved in engaging with the process. There is a balance to be struck between prescribing how the review is conducted and giving freedom to the Presbytery and the Review Group to explore together how best an honest and rigorous appraisal may be carried out and how the Presbytery may own its responsibilities and its vision for the future. There is an opportunity in the process to go beyond a mere tick-box exercise and to encourage Presbyteries to strive for excellence in the fulfilment of their mission.

**6.10** It would be for the Assembly's Presbytery Review Committee to begin to develop good practice in the following:

- enabling thorough and objective oversight of Presbyteries on behalf of the Assembly;
- creating useful and fruitful opportunities for Presbyteries to be self-critical;
- providing an occasion at the General Assembly to celebrate and share good practice for the benefit of the wider Church.

**6.11** In Appendix E the Committee offers an outline of the principles undergirding the proposed Presbytery Review process and will bring a Presbytery Review Act to the General Assembly of 2024.

## **7. REQUESTS FOR REVIEW AND ASSISTANCE UNDER THE PRESBYTERY MISSION PLAN ACT**

**7.1** A sub-group of the Committee has produced Guidance which is being issued to Kirk Sessions who wish to make a request for review under section 3 of the Presbytery Mission Plan Act (Act VIII 2021). The Office of the General Assembly is processing requests received; at the time of writing there are 25 requests for review across 11 Presbyteries, with two requests in addition from Presbyteries for assistance under section 2.2.4 of the Act.

**7.2** The Mission Plan Review Group is now fully appointed with 15 members, and all will be allocated several cases as work progresses on the reviews.

## **8. READERS SOLEMNISING MARRIAGE**

**8.1** The Committee received a remit from the Assembly of 2022 as follows:

*"Instruct the Committee, in consultation with the Faith Nurture Forum and the Theological Forum to explore whether Readers be permitted to apply for permission to officiate at marriage ceremonies and report to the General Assembly 2023 with proposals as required."*

**8.2** This was a proposal raised from the floor of the General Assembly by Professor Herbert Kerrigan, an elder in Greyfriars Church. It was accepted by the Convener to allow time for reflection.

**8.3** The definition of a Reader in the Readership Act (Act XVII 1992) is:

*"A Reader is a person who has been set apart by a Presbytery to an office which qualifies him or her to carry out duties within the Church of Scotland which are principally concerned with the ministry of the Word and the conduct of public worship."*

**8.4** The Legal Questions sub group charged with this remit consulted with the Faith Nurture Forum and with the Theological Forum. The consultation resulted in the noting of the following points:-

- There is no theological reason which would prevent Readers from solemnising marriage as it is not a sacrament within the Church of Scotland.

- A route already exists under civil law to allow individual Readers to be authorised to solemnise a marriage on a temporary basis. That route is through consultation with the Parish Minister and the Presbytery Clerk and then through certification by the Principal Clerk to the Registrar General that the Reader is a fit and proper person.
- The general need for Readers to solemnise marriages was queried given the context of a diminishing number of marriages being carried out by the Church in Scotland. The number of marriages solemnised by the Church of Scotland has reduced from 7.3% of marriages in 2019 to 4.9% of marriages in 2021.
- Readers are not included in the Registration of Ministries Act (Act II 2017). This Act established a Register of Ministry which lists all individuals who hold status as Ministers of Word and Sacrament or as Deacons and as such are authorised to solemnise marriage. The Register is reviewed every year. At present there is no general system to confirm that Readers are fit and proper persons to solemnise marriage. There is no appraisal process for Readers. Training on solemnising marriage would require to be provided.
- A change would be required to the civil law: to the Marriage (Scotland) Act 1977, ideally to section 8(1)(a)(i), to add Readers as persons entitled to solemnise a marriage. This would be a matter for the Scottish Parliament.
- The Office of the General Assembly is already carrying out significant additional work in processing applications for authorisation to conduct same sex marriage. At this time in the life of the Church, steps should be taken to simplify and reduce the administrative procedures required to be carried out by Presbyteries and the Office of the General Assembly and not add to them.

**8.5** In light of these points, in particular, of the existing route to temporary authorisation and in the interests of simplicity, good order and in a desire not to add to the work of Presbyteries and the Office of the General Assembly unnecessarily at the present time, the Committee has concluded that no proposals for change should be suggested.

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## **9. HYBRID GENERAL ASSEMBLY 2023**

**9.1** The Committee has worked with the Assembly Business Committee on making arrangements for the hybrid General Assembly 2023.

**9.2** The Committee has sought to ensure that good decision-making is maintained and that commissioners can both raise issues and engage effectively with debate. The Committee encourages commissioners to ensure that they are fully informed and understand their role in the decision-making process. The Committee has also been involved in reviewing the standing orders of the GA with regard to a hybrid arrangement.

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## **10. BARRIER ACT ISSUES IN LIGHT OF PRESBYTERY REFORM**

**10.1** One recognised consequence of approving the Radical Action Plan in 2019 was the need to *“pay ... appropriate attention to the implications for the Barrier Act, including the possible need for transitional arrangements during implementation”*.

**10.2** Presbytery Reform continues, but is incomplete. Whilst Presbyteries are of significantly differing sizes each has one vote. The Theological Forum's proposed Overture, if sent down in 2023, will require returns by 31 December 2023, as is usual, from 9 Presbyteries in total consisting of approximately 1,094 congregations and 267,800 members and also from those 10 Presbyteries which shall not then have united, consisting of approximately 170 congregations and 15,800 members. These 10 are provisionally expected to form the Presbytery of the Highlands and Hebrides, and thus together have one vote, from 1 January 2024. A question of fairness may arise both in the relative weight given to the votes cast in smaller Presbyteries and also in the preferential weighting being enjoyed by Presbyteries who have not yet fulfilled the General Assembly instruction to amalgamate into larger Presbyteries.

**10.3** There is also the longer term question of what Presbytery Reform means for the voting by Presbyteries of England and of International Charges. Should ten Scottish Presbyteries of much larger size have merely similar voting weight to that of England and the International Presbytery? (The Presbytery of Jerusalem does not have a Barrier Act vote.)

**10.4.1** Assuming the variance in size requires to be addressed, and an argument may be made that it should not, the Committee considered the following approaches.

### **(1) Counting votes of Presbyters, rather than Presbyteries**

This runs counter to the provisions of the Barrier Act: Acts are first to be proposed as Overtures and then be *“... remitted to the consideration of the several Presbyteries of this Church....”* and has been discounted.

### **(2) An electoral college system**

An electoral college system, attributing a number of votes to each Presbytery according to its size, might be applied. Within each Presbytery, a successful vote for or against would carry all of that Presbytery's electoral college votes. The noted three advantages over **counting votes of Presbyters** are that this conforms with the existing terms of the Barrier Act, that any “notes” would still come from Presbytery, clearly from a Presbytery meeting, as opposed to perhaps being perceived to come from individual Presbyters, and issues surrounding the relatively small sizes of the Presbyteries of England and the International Charges can be addressed by giving them a number of electoral college votes.

**10.4.2** However, determining the size of a Presbytery is more challenging but essential to inform allocation of electoral college votes. Help was sought from the statisticians in the Office of the Assembly Trustees who supplied a paper, listing various metrics per Presbytery which were considered in detail. These included the number of congregations, number of charges, membership as at 31 December 2021, adherents as at 31 December 2021, number of commissioners to the General Assembly, number of ministries anticipated in for 2025, the 2019 CoS Responsible population and the average weekly physical attendees at worship (together with online attendance figures which were to be treated with great caution). None of these individual measurements nor any combination of them is ideal for determining the size of a Presbytery.

**10.4.3** A simpler solution is to attribute 10 Barrier Act votes to each of those Scottish Presbyteries who have united already or who will feature in the new Presbytery structure with 1 vote attributed to each of the remaining un-amalgamated Scottish Presbyteries, the Presbytery of England and the Presbytery of International Charges. This would create an electoral pool of 102 votes with the advantage of assessing the relative sizes of the Scottish Presbyteries but still fairly reflecting overall differences in size.

**10.4.4** Upon reflection, an electoral college system was considered an artificial approach, was not clearly justifiable and might not command widespread confidence. Once the large Scottish Presbyteries have all been formed there is, arguably, no issue.

**10.5** The Committee is also conscious that an Overture creating a Book of Confessions and making corresponding changes to the vows and subscription of office holders is being brought to the Assembly this year by the Theological Forum. This will be a double Barrier Act process and shall be considered in the first year by 19 current Scottish Presbyteries, the majority of whom have not as yet amalgamated. Whilst it would be possible to postpone consideration of the Overture until Presbytery Reform is complete, the Theological Forum, being aware of the current situation with Presbytery Reform and its effect on Barrier Act votes, has advised the Committee that it is keen to proceed this year with the remit which it has been given.

**10.6** Overall the Committee has decided not to propose any reform to the Barrier Act.

## 11. COVID PROTOCOLS

**11.1** At the Commission of Assembly of July 2020 and the General Assemblies of October 2020 and May 2021, various Protocols and arrangements were agreed to facilitate meetings and Church business to continue despite the restrictions imposed by the Covid-19 pandemic. At the General Assembly of 2022 a section of deliverance was passed to continue these on an “as needed” basis. The Committee is now hopeful that these Protocols and arrangements are no longer required.

**11.2** One exception to this is that the arrangements for Kirk Sessions, Presbyteries and the General Assembly to meet online will be covered in the Church Courts Act should that be passed by this Assembly. A provision has been added to the Act to confirm that Financial Boards too may meet online. Should that Act not be passed at this year’s Assembly, some sections of deliverance covering the relevant matters will be proposed.

## 12. APPOINTMENTS TO LEGAL BODIES

**12.1** The Judicial Panel consists of 20 people being ministers, elders, deacons and members 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. These persons serve a four year term and are eligible for further four year terms. The Panel supplies members to serve on the Discipline Tribunal and Judicial Commission, and Reviewers for procedural reviews in discipline cases.

**12.2** Experience has shown that more than 20 people would be useful and the Assembly is asked to approve a small change to the Appeals Act (Act I 2014) to increase their number to 30. A proposed amending Act can be found in Appendix F.

*In the name of the Committee*

S GRANT BARCLAY, *Convener*  
 VICTORIA LINFORD, *Vice-Convener*  
 FIONA SMITH, *Secretary*

## Addendum

### The Rev Dr Grant Barclay

The Rev Dr Grant Barclay completes his four year term as Convener of the Committee this year. His sharp mind, unerring focus on the key issues and innovative thinking have been of much benefit to the Committee over his term. A meeting chaired by Grant is never dull and always takes the optimum amount of time to discuss and decide upon any given issue, before moving efficiently on to the next.

He has been instrumental in the drafting of the new Church Courts Act which it is hoped will be of immense practical benefit to all involved in the courts of the Church. He has steered the Committee competently through many complex issues, not least the Presbytery Mission Plan Act and the legislation which the Committee was instructed to bring on the solemnisation of same sex marriage. Of course much of his term required agile responses to the myriad unanticipated problems created by the Covid-19 pandemic and we were fortunate to have someone so clear-sighted at the helm during these difficult times.

Also during his time as Convener he has received the honour of an appointment as a Chaplain-in-Ordinary to His Majesty the King.

Having stepped down, we know that he will not be at a loss for work to occupy him in his “day job” of Clerk to the Presbytery of Glasgow. We hope however that his family, home and garden may benefit from some extra time being available for him to spend there. He leaves with our grateful thanks and best wishes for his future endeavours.

VICTORIA LINFORD, *Vice-Convener*

## Encomium

### The Procurator, Laura Dunlop KC

Laura Dunlop will step down from her position as Procurator following this Assembly, on 31 May 2023, after serving 18 years in the role. The office of Procurator has a long history and Laura is only the 26th person to occupy the role since its inception in 1638. She also has the distinction of being the longest serving Procurator and the first female in the role.

Laura has been an exceptionally wise and calm source of valuable advice across a vast array of topics, covering both Church and civil law. She has provided superb legal representation to the Church in its occasional forays into litigation in the upper courts and has, at the other end of the scale, been assiduous in her attendance at, and contribution to, the meetings and work of the Legal Questions Committee and its various task groups as they have grappled with difficult legal matters. Her authoritative, incisive and practical legal advice to successive General Assemblies has been invaluable. She has also been a trustee of the Iona Cathedral Trust and has made a significant contribution to the work of the Trust, particularly during the major renovation work to the Library in 2018.

Laura's drafting advice is always accurate and always improves a text. Her sense of humour has lifted many a dry meeting and she has a wonderful store of enlightening and apposite phrases which she produces as required: "It is the difference that makes the difference". She will be distressed by the inclusion of many adjectives – the litigator's foe – in this note! All of her work for the Church has been underpinned by her personal faith, her empathetic understanding of the context in which the work of the Church is carried out and her detailed legal knowledge.

We have been fortunate to have, in Laura, such an outstanding servant of the Church. She will be greatly missed, in particular by those who have worked most closely with her and have most cause to be grateful to her: the Principal and Depute Clerks, the Solicitor and the Convener of the Legal Questions Committee.

At the Bar, Laura's wide-ranging civil practice has been supplemented by service in several public inquiries, including as Senior Counsel to the Penrose Inquiry into viral transmission by blood and blood products, and as a part-time Law Commissioner.

Laura was appointed in October 2019 to be the President of the Mental Health Tribunal for Scotland and we wish her well as she continues that demanding work, alongside her position as an elder at Greyfriars Kirk in Edinburgh.

S GRANT BARCLAY, *Convener*  
FIONA SMITH, *Secretary*

## Appendix A

### Amendments to Standing Orders

#### Amended SO 35

##### 35. Status

- (i) **Presbyteries shall be entitled to appoint persons to serve as Youth Representatives as follows:**
  - (a) **Each Scottish Presbytery may appoint up to four Youth Representatives.**
  - (b) **The Presbyteries of England, International Charges and Jerusalem may each appoint one Youth Representative.\***
- (ii) Each Youth Representative shall be between the ages of eighteen and twenty-five on the opening day of the General Assembly. They shall be involved in the life of a congregation within the bounds of the Presbytery and shall be regularly involved in the life and worship of the Church of Scotland. The minister of the congregation in question shall provide confirmation of this involvement if asked by **the Presbytery of the bounds**.
- (iii) The names of Youth Representatives shall be passed to the Clerks of Assembly by **31 January** each year. **If a Presbytery does not use fully use its entitlement to appoint Youth Representatives in any given year, its unused entitlement may be allocated to another Presbytery or Presbyteries at the discretion of the Clerks of Assembly.**
- (iv) Youth Representatives shall be entitled to speak and move motions but not to vote:
  - during debates on Committee reports, and
  - during debates on Overtures.
- (v) Youth Representatives shall not be entitled to speak, move motions or vote:
  - during debates on Petitions or cases, and
  - during debates on matters affecting General Assembly procedure or Standing Orders.
- (vi) Youth Representatives shall not be members of the Commission of Assembly.

#### Oversight

- (vii) The Faith Nurture Forum shall take responsibility for Youth Representatives and shall extend to them appropriate hospitality.

**\*Note: This drafting assumes that an Overture is to be received from the Presbytery of Clèir Eilean Ì: (Highlands & Hebrides) at GA 2023, but if that is not received, these sub-paragraphs should instead, for the following year only, read:**

- (a) **Each Scottish Presbytery other than those expected to form the Presbytery of Clèir Eilean Ì: (Highlands & Hebrides) may appoint up to four Youth Representatives.**
- (b) **Those Presbyteries expected to form the Presbytery of Clèir Eilean Ì: (Highlands & Hebrides) may together appoint up to four Youth Representatives.**
- (c) **The Presbyteries of England, International Charges and Jerusalem may each appoint one Youth Representative.**

**Appendix B****Draft Church Courts Act****CHURCH COURTS ACT***Edinburgh, [ ] May 2023, Session [ ]*

WHEREAS in terms of the Fourth Article Declaratory, the Church of Scotland as part of the Universal Church wherein the Lord Jesus Christ has appointed a government in the hands of Church office-bearers, receives from him, its Divine King and Head, and from Him alone the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution and membership of its Courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its Ministers and other office-bearers;

Accordingly, in respect of the courts of the Church, the General Assembly hereby enact and ordain as follows:

**PART 1 – CHURCH COURTS****1. Broad principle**

**1.1** The government of the Church of Scotland is Presbyterian and is exercised through courts, being Kirk Sessions, Presbyteries and General Assemblies, as set out in the Articles Declaratory.

**PART 2 – KIRK SESSION****2. Broad principle**

**2.1** The Kirk Session is the court which is responsible for the life and witness of the Church of Scotland in a parish.

**2.2** The Kirk Session shall exercise oversight and leadership over the congregation's participation in Mission within the parish and the congregation's sharing in the wider work of the Church, through Worship, Service, Fellowship, Discipleship and Evangelism<sup>[i]</sup>. The Kirk Session shall ensure these facets of church life are held in balance and expressed in ways appropriate to the context.

**3. Functions and responsibilities**

**3.1** In achieving the broad principle above, the Kirk Session shall fulfill the following functions and responsibilities:-

**Witness**

- (1) **Mission:** Develop the congregation's engagement in Mission in terms of section 2.2.
- (2) **Public Worship and Communion:** Determine the hours of public worship and the times of dispensing the Lord's Supper, the latter in terms of the Sacraments Act (Act V 2000), always subject to determination by Presbytery as part of parish adjustment.
- (3) **Pastoral and spiritual care:** Exercise oversight over the pastoral and spiritual care of the whole congregation, and offer pastoral care as appropriate across the parish, throughout the whole of life.

**Congregational Life**

- (4) **Office bearers:** Appoint a Clerk and a Safeguarding Coordinator, and where there is no Congregational Board or Deacons' Court, a Treasurer. The Kirk Session may make other appointments as required. The oath *de fidei* shall be administered to a Clerk or Interim Clerk.<sup>[ii]</sup> The Clerk need not be a member of the Kirk Session but while in post shall be a charity trustee.
- (5) **Congregational membership and adherence:** Determine issues of membership and adherence in the congregation and be responsible for keeping a Roll of the congregation which is up to date and retained in accordance with data protection law.
- (6) **Session membership:** Manage membership, including by adding to its number and receiving resignations of its members.
- (7) **Discipline:** Maintain good order in the life of the congregation and respond to the misconduct of members and adherents.
- (8) **Baptisms:** Determine in collaboration with the Minister those to whom the sacrament of baptism may be administered and be responsible for the keeping of a Roll of Baptisms, subject to data protection law and in terms of the Sacraments Act (Act V 2000)
- (9) **Finance and Property:** Be responsible for the financial arrangements and the care of the property belonging to the congregation, including maintenance of a Property Register, unless there is a Congregational Board or Deacons' Court<sup>[iii]</sup>.
- (10) **Church buildings and land:** Exercise rights and responsibilities over Church buildings as set out in section 12 of the Parish Ministry Act (Act II 2018) and, where buildings or land are vested in the Church of Scotland General Trustees, in accordance with any directions given by them in matters of health and safety.
- (11) **Stewardship:** Bring the resourcing needs and commitments of the congregation and wider Church to the attention of members and adherents on a regular basis and encourage generosity in giving of time, talents and money.
- (12) **Oversight of congregational organisations:** Oversee all Sunday Schools and ministries for children, young people and families, congregational organisations and mission work of the congregation.

- (13) **Appointments:** Appoint appropriate persons to work in the congregation to support the Mission of the congregation; fulfil all responsibilities consequentially arising in terms of the civil law on employment; and unless the congregation has a Congregational Board or Deacons' Court, be responsible for the payment of salaries.
- (14) **Communications:** Be responsible for all publications and communications, including social media, issued in the name of the congregation.

#### Church Law

- (15) **Compliance:** Carry out the functions and comply with the responsibilities specified in Acts and Regulations of the General Assembly, and comply with instructions of Presbytery and the General Assembly.<sup>[iv]</sup>
- (16) **Rolls and records:** Submit annually to Presbytery for examination the rolls, registers, and records of the congregation and submit for attestation by Presbytery the trustees' report and annual congregational accounts<sup>[v]</sup>.
- (17) **Conflicts of interest:** Adopt and operate a suitable policy which demonstrates conflicts of interest are recognised and managed effectively.

#### Civil Law

- (18) **Charity law:** ensure that the congregation is registered as a Charity and that it follows civil charity law and good practice, including the timeous submission of accounts for attestation by Presbytery and thereafter to OSCR; also discharge the duties of charity trustees in terms of the civil law on charities, in particular those contained in the Charities and Trustee Investment (Scotland) Act 2005 (as amended).
- (19) **Safeguarding:** fulfil all responsibilities placed upon it in terms of civil law and the Safeguarding Act (Act XVI 2018), ensuring that necessary Safeguarding training is undertaken, that records of such training are maintained, and that the Safeguarding Congregational Register and the Safeguarding Audit Checklist are completed annually.
- (20) **Data protection:** be responsible for fulfilling the provisions of civil law on data protection, in accordance with advice and assistance provided by the national Church offices and Church website.
- (21) **Health and safety law, employment law and other civil law:** comply as required.

#### Co-operation with Presbytery

- (22) **Presbytery Elder:** appoint one of their number to serve as a member of the relevant Presbytery.
- (23) **Mission Planning:** take due part in the creation and annual updating of the Presbytery Mission Plan as set out in the Presbytery Mission Plan Act (Act VIII 2021).
- (24) **Vacancy Procedure:** fulfil the various responsibilities set out in the Vacancy Procedure Act (Act VIII 2003).
- (25) **Superintendence:** co-operate with Presbytery as it exercises its general powers of superintendence and in particular participate in the processes of the Local Church Review Act (Act I 2011).

**3.2** Where a Kirk Session is a Services Kirk Session in terms of the H.M. Forces (Kirk Sessions) Act (Act VIII 1952), the terms of this Act shall be interpreted and applied with all necessary adaptations.

#### 4. Delegation of Authority

**4.1** The Kirk Session may delegate its authority to make decisions in certain areas of responsibility to individuals or committees on such terms as the Kirk Session may determine. The Kirk Session may include in the delegation a mechanism by which Kirk Session members beyond the group can, before a final decision is made by the delegated group, request that the matter come back to a full meeting of the Kirk Session.

**4.2** In delegating, the Kirk Session shall ensure that:

- a) all the members of the Kirk Session are aware that as charity trustees they retain responsibility for the decisions made by the delegated group and decisions made by a delegated group will be open to Dissent and Complaint or Appeal in terms of the Intimation of Appeals Act (Act V 2004).
- b) it identifies at a full meeting of the Kirk Session the individual or the membership of the group to which the powers are to be delegated including lines of accountability.
- c) it sets out in an agreed minute the extent of the delegated powers including if appropriate reference to the relevant Act(s) and/or Regulations of the General Assembly regarding the decisions the group is charged with making, the budget limits within which they must work, and the point at which the group must refer decision-making back to a full meeting of the Kirk Session.
- d) it minutes its acceptance that decisions made by the group are final and cannot be recalled or rescinded by the Kirk Session save where the mechanism permitted by section 4.1 has been included in the scheme of delegation.
- e) no further delegation is possible by the delegated group without the consent of the Kirk Session.

**4.3** Delegation, once made, may thereafter be rescinded or amended by the Kirk Session but not on a retrospective basis and such rescission or amendment shall only become effective once intimated to the members of the delegated group.

#### 5. Meetings

**5.0** Kirk Session meetings shall normally be held in public but may be held in private for the whole or part of a meeting where the Session so determines for items of business which are personal, disciplinary or are of a pastoral or commercially sensitive nature.



## 5.1 Calling Meetings

**5.1.1** Ordinary Meetings shall be called by the Kirk Session at a previous Ordinary Meeting. The Kirk Session may call one or more such meetings at a time. Normally public notice of at least ten days (and including two Sundays) of a meeting shall be given. Elders may also be notified by hard copy letter, by electronic means, by telephone call, or by a combination of these methods.

**5.1.2** A Specific Purpose Meeting shall be called either at an Ordinary Meeting or, where the need arises between Ordinary Meetings, it may be called by the Moderator on the advice of the Clerk. The first item of business at a Specific Purpose Meeting called by the Moderator shall be the approval of the Moderator's decision to call the meeting. No other business beyond the specific purpose previously intimated shall be discussed at such a meeting.

**5.1.3** The calling of a Specific Purpose Meeting called by the Moderator shall be in writing with a period of notice of at least fourteen days, provided that in exceptional circumstances a shorter period of notice may be given, and in this event the first item of business shall be approval of the shorter period of notice.

**5.1.4** The Moderator must call a Session meeting to be held within ten days on the instruction of the relevant Presbytery.

**5.1.5** In addition, the Moderator must call a Session meeting to be held within ten days where he or she is requested in writing to do so by either of the following groups: (1) a majority of the ruling Elders, or (2) where the ruling Elders exceed nine in number, at least one-third with a minimum of five.

**5.1.6** In each year, in addition to the regular conduct of business, the Session must:

- a) review and approve the Communion Roll and Supplementary Roll,
- b) approve the trustees' report and accounts of the congregation for the preceding financial year,
- c) review and approve the Safeguarding Register, and
- d) appoint the Presbytery Elder,

all in accordance with Church law.

## 5.2 Procedure at Meetings

**5.2.1** Meetings shall be constituted and closed with prayer.

**5.2.2** All meetings shall be minuted, with the minute of each meeting being circulated in draft following the meeting and being subject to approval at the start of the following ordinary meeting. The minute shall record the date, time, and (if in person) place of the meeting, the name of the Moderator, attendees (including apologies) and decisions made and actions taken. Minutes shall be retained as set out in the Guidance.

**5.2.3** The minute of a meeting (or part of it) held in private shall be in held in a Record Apart.

**5.2.4** Meetings may take place in person, or online, or by a combination of these methods. Where the meeting is online to any extent, the Moderator shall ensure that those attending can participate, debate and vote and that this can be done in private where required.

**5.2.5** A person who is not a member of the Kirk Session, whether or not a member of the congregation, may attend a Session meeting (except to the extent that it is being held in private). Where a meeting is held wholly online and a person not a member of the Kirk Session wishes to observe those parts of the meeting not held in private, a web link shall be provided upon request. A person who is not a member of the Kirk Session shall require permission of the Kirk Session to speak on a particular item (or items) of business, which may be a standing permission<sup>[vi]</sup>. A request to speak shall be made by submitting it in writing to the Session Clerk, normally at least seven days in advance of the date of the meeting. The request shall then be considered at the meeting of the Kirk Session in question.

**5.2.6** The Standing Orders of the General Assembly shall apply as matter of default to Kirk Session meetings, but a Kirk Session may adopt Standing Orders of its own provided these are not incompatible with Church law.

## 5.3 Moderator and Interim Moderator

### 5.3.1 Moderator

**5.3.1.1** The Minister of the charge shall be the Moderator of the Kirk Session, save where other arrangements are specified in a Basis of Team Ministry. Otherwise the Kirk Session may be moderated by an Interim Moderator as set out below or as set out in the Kirk Session Meetings Act (Act VI 2004).

**5.3.1.2** The Moderator of the Kirk Session while in the chair has a casting vote but no deliberative vote. He or she may introduce items of business and may speak to them.

### 5.3.2 Interim Moderator

**5.3.2.1** The Presbytery may appoint an Interim Moderator of the Kirk Session. This shall normally be done when the charge is vacant, or when the Minister is on sick leave or has been granted leave of absence. It may also be done in anticipation of an impending vacancy, while the Minister is still in office, to deal with adjustment and vacancy business. An Interim Moderator shall normally be appointed where the Minister's absence has extended to, or is anticipated to last, for more than six weeks.

**5.3.2.2** Where the relevant Presbytery appoints an Interim Moderator, the Interim Moderator shall be either a ministerial member of the Presbytery in terms of this Act or the Presbytery Assessors Act (Act V 2001) or a member of the Presbytery selected from the Presbytery's list of those who have received such preparation for the task as the Faith Nurture Forum shall from time to time recommend or provide.

## **5.4 Quorum**

**5.4.1** The quorum of a Kirk Session shall be three, being the Moderator, Interim Moderator or appointee in terms of the Kirk Session Meetings Act (Act VI 2004), plus two ruling Elders.

**5.4.2** If there be not a sufficient number of ruling Elders available to make a quorum, or in cases of difficulty at the discretion of the Presbytery, Assessor Elders may be appointed by the Presbytery. When appointing Assessor Elders, Presbytery shall state whether or not the Assessor Elders have a vote in Session business; those appointed with voting rights shall be charity trustees from the date of their appointment until they are discharged. The appointment of Assessor Elders shall be reviewed annually.

## **6. Membership of the Kirk Session**

**6.1** The Kirk Session shall consist of the Minister(s) of the parish, any associate Minister or parish Deacon if qualified as set out below, and the ruling Elders of the congregation. All members of the Session shall have the right to vote.

**6.2** An associate Minister or parish Deacon introduced in terms of section 32(4) of the Vacancy Procedure Act (Act VIII 2003), shall be a member of the Kirk Session. Where there is a Team Ministry, all Ministers shall be members of the Kirk Session. Any other Minister or Deacon may be associated in the practical work of the Kirk Session of the congregation on the invitation of the Kirk Session, with the right to attend meetings and to speak, but not to vote, and shall not be a member of the Kirk Session.

**6.3** Where there is no Congregational Board or Deacons' Court, the Kirk Session shall also appoint a Treasurer who need not be an Elder nor member of the congregation, but who shall, while in post, assume the duties and obligations of charity trusteeship.

**6.4** Members of the Kirk Session along with members of the Congregational Board or Deacons' Court, though not Correspondents, shall be charity trustees of the congregation for the purposes of civil charity law. Other persons may be charity trustees for the purposes of civil charity law according to that congregation's constitution.

**6.5** The Kirk Session may appoint Correspondents, who shall have the following rights in respect of meetings: to receive papers, to attend and to speak but not to vote. A Correspondent need not be a member of the congregation. A Correspondent shall not be present when business is taken in private.

**6.6** A locum in a vacancy shall not be a member of a Kirk Session but if the Kirk Session so decides may be invited to attend Kirk Session meetings and allowed to speak.

**6.7** Elders shall be elected, ordained and admitted to the Kirk Session in terms of the Election and Admission of Elders and Deacons Act (Act X 1932). Such Act includes provision for Elders to be admitted to the Kirk Session on the basis of fixed term membership. The minimum age for an Elder is eighteen years. The Kirk Session shall keep the number of ruling Elders under review, for efficient operation.

**6.8** An Elder who ceases to be a member of a Kirk Session does not, if he or she transfers to another congregation, thereby become a member of its Kirk Session but may do so upon invitation.

**6.9** A Kirk Session may agree to accept a standing apology from a ruling Elder for all meetings occurring between specified dates on cause shown. If agreed to, such an Elder remains a charity trustee and shall continue to be supplied with documents for all Session meetings.

**6.10** Where (i) a ruling Elder fails to attend Kirk Session meetings for a period of twelve months without submitting apologies for their absence, or (ii) a Session determines that a ruling Elder is not, whether through infirmity, illness or otherwise, participating sufficiently in Kirk Session business, the Session may, having first invited the person to offer reasons for their absence or lack of participation and assurances regarding their future involvement, remove that person from the membership of the Session. The Session Clerk will write to that person to confirm that they have been removed from the membership of the Session. From the date of their removal they will no longer be a charity trustee<sup>[vii]</sup>.

## **7. Relationship with other Church Courts**

**7.1** A Kirk Session, as the inferior court, is answerable to the Presbytery and, as such, must obey the instructions of the Presbytery and the General Assembly. As such, appeals against decisions of Kirk Sessions shall be heard and disposed of by the Presbytery or those to whom the Presbytery delegates such authority.

**7.2** Relationships with other Kirk Sessions may be governed by Bases, such as a Basis of linking or parish grouping, approved by Presbytery in terms of the Presbytery Mission Plan Act (Act VIII 2021). Where decisions are required to be made, two or more Kirk Sessions may meet in conference but they require to meet separately (and this may be in the same place at the same time) to make their own decisions<sup>[viii]</sup>.

**7.3** Where a Kirk Session becomes aware of difficulties in the congregation or Session which it cannot itself resolve, it shall make the Presbytery aware of the situation or where Presbytery itself becomes aware of such circumstances, the Presbytery shall proceed to take appropriate action.

**7.4** Whenever a Kirk Session meeting is called by the authority of the Presbytery in terms of the Local Church Review Act (Act I 2011) or the Presbytery Mission Plan Act (Act VIII 2021) or for any other purpose relating to the superintendence of the congregation by the Presbytery, the representative of Presbytery appointed to moderate the meeting shall determine whether on any occasion the Kirk Session shall meet without the presence of the Minister.

## **8. Appeals**

**8.1** Decisions of the Kirk Session are subject to appeal, and any such appeal shall be heard by the relevant Presbytery, or those to whom the Presbytery delegates authority. An appeal against a decision of the Kirk Session can be made only by a person described in the Intimation of Appeals Act (Act V 2004) and an appeal must be intimated in accordance with the provisions of that Act.

**PART 3 – PRESBYTERY**

**9. Broad Principle**

**9.1** Presbytery is the court which is responsible for the gathered life of the Church of Scotland. This responsibility is both corporate and individual, and rests on members and office-bearers alike. The collective task is the support and oversight of the local church as well as participating in the life of the Church at General Assembly level.

**9.2** Each area of Scotland shall be covered by such a Presbytery and each local expression of church belonging to the Church of Scotland shall be subject to the oversight of the relevant Presbytery.

**9.3** In addition, there shall be Presbyteries which oversee Church of Scotland congregations furth of Scotland.

**10. Functions and Responsibilities**

**10.1** The Presbytery shall exercise oversight and leadership over the local church’s participation in Mission and promote sharing in the wider work of the Church. To that end the Presbytery shall fulfil the following functions and take such other initiatives as the Presbytery see fit (subject always to Church law):-

**Support and Oversight of the Local Church**

- (1) create, implement and maintain the Presbytery Mission Plan as specified in the Presbytery Mission Plan Act (Act VIII 2021).
- (2) oversee Vacancy Procedure as set out in the Vacancy Procedure Act (Act VIII 2003).
- (3) carry through the process of Local Church Review as set out in the Local Church Review Act (Act I 2011).
- (4) provide pastoral care to parish Ministers and parish Deacons<sup>[ix]</sup>.
- (5) annually examine and attest rolls, records, minutes, registers, expense claims, and accounts.

**Superintendence**

- (6) exercise general powers of superintendence.
- (7) exercise discipline over Ministers, Deacons, Elders and local office bearers in terms of the Discipline Act (Act I 2019) and provide pastoral care to those involved in the discipline process.
- (8) operate the Complaints Procedure as approved by the General Assembly.
- (9) hear and dispose of appeals against the decision of a Kirk Session.

**Resourcing Congregations**

- (10) provide resources or identify access to resources for congregations and other expressions of local church life as set out in Church law or as the Presbytery may determine.
- (11) fulfil its responsibilities in relation to Readers in terms of the Readership Act (Act XVII 1992), to Ordained Local Ministers in terms of the Ordained Local Ministry Act (Act IX 2011) and to Auxiliary Ministers in terms of the Auxiliary Ministers Act (Act XIII 2003).
- (12) select, train and maintain lists of worship leaders in terms of the Parish Ministry Act (Act II 2018).

**Beyond the Church**

- (13) order itself in such a way that the local church can gain a collective voice to speak with those representing civil authority, other denominations, other faith groups, the Third Sector, business interests, and cultural life.

**General Assembly Processes**

- (14) participate in any Presbytery Review process<sup>[x]</sup>.
- (15) cooperate with agencies and officials of the General Assembly as they fulfil their remits.
- (16) nominate and supervise Candidates for the Ministry of Word and Sacrament and the Diaconate.
- (17) provide such information regarding statistics, office bearers, and finance as required by Church law.
- (18) respond timeously to General Assembly remits and ensure compliance with the requirements of the Barrier Act.

**Good Order**

- (19) ensure good order in the conduct of its shared life.
- (20) carryout the functions and comply with the responsibilities specified in Acts and Regulations of the General Assembly, and comply with instructions of the General Assembly.
- (21) elect a Moderator from amongst its number. Such an appointment shall be in terms of the Presbytery’s Standing Orders but, for the avoidance of doubt, may be for a period of time of at least one year and of the Presbytery’s choosing.
- (22) appoint a Clerk and in the absence of the Clerk from any meeting, appoint an Interim Clerk. The Clerk need not be a member of the Court. The oath *de fidei* shall be administered to a Clerk or Interim Clerk.<sup>[xi]</sup>
- (23) ensure that the Roll of Presbytery is kept up to date and retained in accordance with Data Protection law.
- (24) appoint appropriate persons to work in the Presbytery to support the mission of the Presbytery; fulfil all responsibilities consequentially arising in terms of the civil law on employment; and be responsible for the payment of salaries.
- (25) adopt and operate a suitable policy to recognise and manage conflicts of interest effectively and demonstrably.

## **Civil Law**

- (26) ensure that the Presbytery is registered as a Charity and follows civil charity law and good practice, including the timely submission of Presbytery accounts to OSCR.
- (27) ensure that the duties of charity trustees in terms of the civil law on charities, in particular those contained in the Charities and Trustee Investment (Scotland) Act 2005 (as amended) are discharged.
- (28) attest all congregational trustees' reports and annual accounts prior to their submission to OSCR.
- (29) cooperate with the Assembly Trustees on matters of charity governance.
- (30) fulfil all responsibilities placed upon the Presbytery in terms of civil law and the Safeguarding Act (Act XVI 2018), including the provision of Safeguarding training and maintenance of records of such training, and the annual completion of the Safeguarding Audit Checklist.
- (31) act as the data controller, in terms of the Data Protection Act 2018, for congregations within its bounds and be responsible for registering as such with the Information Commissioner's Office.
- (32) fulfil the provisions of civil law on data protection, in accordance with advice and assistance provided by the national Church offices and Church website.
- (33) comply as required with health and safety law, employment law and other civil law.

## **11. Delegation of Authority**

**11.1** The Presbytery may delegate their authority to make decisions in certain areas of responsibility to individuals or committees on such terms as the Presbytery may determine. The Presbytery may include in the delegation a mechanism by which Presbytery members beyond the group can, before a final decision is made by the delegated group, request that the matter come back to an Ordinary Meeting of the Presbytery.

**11.2** In delegating, the Presbytery shall ensure that:

- a) all the members of the Presbytery are aware that as charity trustees they retain responsibility for the decisions made by the delegated group and decisions made by a delegated group will be open to Dissent and Complaint or Appeal in terms of the Appeals Act (Act I 2014).
- b) they identify at an Ordinary Meeting the individual or the membership of the group to which the powers are to be delegated including lines of accountability.
- c) they set out in an agreed minute the extent of the delegated powers including if appropriate reference to the relevant Act(s) and/or Regulations of the General Assembly regarding the decisions the group is charged with making, the budget limits within which they must work, and the point at which the group must refer decision-making back to an Ordinary Meeting of the Presbytery.
- d) they minute their acceptance that decisions made by the group are final and cannot be recalled or rescinded by the Presbytery save where the mechanism permitted by section 11.1 has been included in the scheme of delegation.
- e) No further delegation is possible by the delegated group without the consent of the Presbytery.

**11.3** Delegation, once made, may thereafter be rescinded or amended by the Presbytery but not on a retrospective basis and such rescission or amendment shall only become effective once intimated to the members of the delegated group.

## **12. Meetings**

**12.0.1** Meetings of Presbytery shall be Ordinary Meetings (where any appropriate business may be discussed) or Specific Purpose Meetings (where only previously intimated business may be discussed).

**12.0.2** All meetings of Presbytery shall be open to the public except when the Presbytery decides to meet in private for the whole or part of a meeting for items of business which are personal or are of a pastoral, disciplinary or commercially sensitive nature.

**12.0.3** Papers for meetings shall normally be circulated in advance.

### **12.1 Calling meetings**

**12.1.1** Ordinary Meetings shall be called by the Presbytery at a previous Ordinary Meeting. The Presbytery may call one or more such meetings at a time. Presbyters may be notified by hard copy letter, by electronic means, by telephone call or by a combination of these methods.

**12.1.2** A Specific Purpose Meeting shall be called either at an Ordinary Meeting or, where the need arises between Ordinary Meetings, it may be called by the Moderator on the advice of the Clerk. The first item of business at a Specific Purpose Meeting called by the Moderator shall be the approval of the Moderator's decision to call the meeting. No other business beyond the specific purpose previously intimated shall be discussed at such a meeting.

**12.1.3** The calling of a Specific Purpose Meeting called by the Moderator shall be in writing with a period of notice of at least fourteen days, provided that in exceptional circumstances a shorter period of notice may be given, and in this event the first item of business shall be approval of the shorter period of notice.

### **12.2 Procedure at Meetings**

**12.2.1** Meetings shall be constituted and closed with prayer.

**12.2.2** All meetings shall be minuted, with the minute of each meeting being circulated in draft following the meeting and being subject to approval at the start of the following meeting. The minute shall record the date, time, and (if in person) place of the meeting, the name of the Moderator, attendees and decisions made and actions taken. Minutes shall be retained as set out in the Guidance.

**12.2.3** The minute of a meeting (or part of it) held in private shall be in held in a Record Apart.

**12.2.4** Meetings may take place in person, or online, or by a combination of these methods. Where the meeting is online to any extent, the Moderator shall ensure that those attending can participate, debate and vote and that this can be done in private where required.

**12.2.5** The agenda for an Ordinary Meeting shall include the updating of the Roll of Presbytery and the calling of the next Ordinary Meeting.

**12.2.6** A person who is not a member of the Presbytery, whether or not a member of a congregation within the relevant Presbytery, may attend a Presbytery meeting (except to the extent that it is being held in private) but shall require permission of the Presbytery to speak on a particular item (or items) of business. A request to speak shall be made by submitting it in writing to the Presbytery Clerk, normally at least seven days in advance of the date of the meeting. The request shall then be considered at the meeting of the Presbytery in question. Nothing in this section precludes other rights to address Presbytery<sup>[xiii]</sup>.

**12.2.7** Meetings shall be conducted in line with the Presbytery's Standing Orders and where there is no such provision the Standing Orders of the General Assembly shall apply as appropriate. Where the Presbytery have Standing Orders they shall be published on the Presbytery's website.

### **12.3 Moderator**

**12.3.1** The Moderator of the Presbytery shall be chosen from among the members of the court by free election, on the recommendation of the Business or other Committee of Presbytery, and shall hold office for a year at least and be eligible for re-election.

**12.3.2** The Moderator while in the chair has a casting vote but no deliberative vote.

### **12.4 Quorum**

**12.4.1** The quorum for a Presbytery meeting shall be three members of the Court, at least one of whom shall be a Minister and one an Elder.

## **13. Membership of Presbytery**

**13.0.1** Ministers, Deacons and Elders, and no others, shall be entitled to be members of Presbytery.

**13.0.2** Members of the Presbytery, though not Correspondents, shall be charity trustees of the Presbytery for the purposes of civil charity law. Other persons who participate in the general control and management of the administration of the Presbytery may be charity trustees for the purposes of civil charity law.

### **13.1 Ministers**

**13.1.1** A Minister shall be a member of the Presbytery where there is situated: -

- a) the charge to which a Minister has been inducted or within which the Minister serves as associate, assistant, or auxiliary, failing which
- b) the office, institution or other place from which a Minister works, failing which
- c) wholly or mainly the area of a Minister's responsibility, provided that, if the area extends over the boundaries of more than one Presbytery, the Presbytery containing the larger or largest part of that area shall be the relevant Presbytery.

**13.1.2** A Minister in any of the following categories shall be a member of the relevant Presbytery:

- a) a Minister inducted to a charge,
- b) an associate Minister,
- c) a pioneer Minister,
- d) an interim or transition Minister,
- e) an assistant Minister,
- f) an Ordained Local Minister or an auxiliary Minister in a designated appointment,
- g) a healthcare chaplain,
- h) a prison chaplain,
- i) a workplace chaplain,
- j) a university chaplain, and
- k) a professor or lecturer in an accredited institution as defined in Act X 2004.

**13.1.3** A Minister in any of the following categories shall be a member of the relevant Presbytery or, if there is no such Presbytery, of the Presbytery to which he or she belonged at the time of appointment or by which he or she was ordained for the appointment:

- a) a Minister appointed by a Committee of the Church to an overseas post,
- b) a Minister appointed to a Commission as a chaplain to H.M. Forces.

**13.1.4** A Minister appointed to a post, other than those in sections 13.1.2 and 13.1.3 above and other than that of *locum* for a parish Minister, within the jurisdiction of the Church and under the direction and control of one of its courts or Committees, shall be a member of the relevant Presbytery or of the Presbytery within which is situated the congregation of which he or she is a member or of the Presbytery within the boundaries of which he or she resides, as he or she may choose.

**13.1.5** Any individual who has the status of Minister of the Church of Scotland, and who does not fall into any of the categories listed in sections 13.1.2 to 13.1.4 above, shall be entitled to apply for membership of Presbytery on the basis of being registered in the Register of Ministry (as defined in the Registration of Ministries Act (Act II 2017)) in category O, E or R. Such Minister should be registered with the Presbytery within the boundaries of which is situated the congregation of which the Minister is a member, or the Presbytery within the boundaries of which he or she lives, or (only in the case of any appointment for which the status of ordained Minister is a requirement) the Presbytery within the boundaries of which the appointment is based, as he or she may choose.

### **13.2 Deacons**

**13.2.1** A Deacon shall be a member of Presbytery if he or she occupies a parish appointment, or any other post that would entitle a Minister to membership of Presbytery in terms of sections 13.1.2 to 13.1.4 of this Act, and the provisions of those sections shall determine which is the relevant Presbytery. A Deacon who does not occupy such a parish appointment, or other qualifying post, but who is registered on the Register of Ministry in Category E or R, shall be entitled to apply for membership of Presbytery on the same basis as a Minister holding Category E or R registration, being in terms of section 13.1.4 of this Act and the Presbytery shall have power to decide whether or not to register such individual.

### **13.3 Elders**

**13.3.1** Each Kirk Session within the boundaries of a Presbytery shall, not later than 30<sup>th</sup> June in each year, meet, and, with the exception undernoted, elect one of its own members (or, with permission of the Presbytery, a member of another Kirk Session within the relevant Presbytery) to represent it in the Presbytery during the ensuing year.

**13.3.2** Commissions in favour of representative Elders shall run from 1st July to 30th June and may be presented to any meeting of Presbytery held after the close of the General Assembly, providing a quorum is present apart from the Elder whose commission is presented. On the commission being declared in order the Elder concerned shall be entitled to take his or her seat.

**13.3.3** In the event that a representative Elder becomes unable to serve during the year, the Kirk Session shall elect a replacement Elder and shall notify the Presbytery. The replacement Elder's commission shall run until the following 30th June.

**13.3.4** A Presbytery shall elect one Elder (a "balancing Elder") in respect of each Minister who serves in an extra-parochial appointment or who is a member of Presbytery by virtue of section 13.1.5, and may further elect a number of additional Elders not in excess of one-third of the number of congregations within its boundaries. Such Elders shall be:

- a) a member of a Kirk Session within the boundaries of the Presbytery and before taking their seats they shall produce certificates of bona fide eldership from the Kirk Sessions to which they belong, or
- b) an ordained elder who is not currently a member of a Kirk Session but who is a member of a congregation within the boundaries of the Presbytery and can exhibit certification that he/she is in good standing and has not been deprived of the status of elder in a disciplinary process.

The Presbytery shall determine the process for identifying and selecting such Elders.

### **14. Correspondents**

**14.1** A Presbytery may elect Correspondents, who shall have the following rights in respect of meetings: to receive papers, to attend and to speak but not to vote. A Correspondent need not be a Minister, Elder or Deacon of the Church of Scotland. A Correspondent shall not be present when business is taken in private.

### **15. Relationship with other Church Courts**

**15.1** The Presbytery, as the superior court, has oversight of the Kirk Session and has the power to instruct Kirk Sessions and Financial Boards to act or to refrain from acting always in accordance with the Acts and Regulations of the General Assembly and the common law of the Church.

**15.2** The Presbytery shall hear and dispose of appeals against decisions taken by Kirk Sessions.

**15.3** The Presbytery, as the inferior court, is answerable to the General Assembly and, as such, must obey the instructions of the General Assembly. Appeals against decisions of Presbytery shall be heard and disposed of by the General Assembly or those to whom the General Assembly delegates such authority.

**15.4** The Presbytery shall send Commissioners to the General Assembly. These shall be elected by the Presbytery in accordance with the Standing Orders and Acts of the General Assembly.

**15.5** The Presbytery shall cooperate with the General Assembly as they exercise general powers of superintendence and conduct the process of Presbytery Review.

### **16. Appeals and Reviews**

**16.1** Decisions of the Presbytery are subject to appeal or review, and such an appeal or review shall be heard by the appropriate appellate body of the General Assembly. Appeals shall be in terms of the Appeals Act (Act I 2014). Presbytery Mission Plan decisions shall be subject to review in terms of the Presbytery Mission Plan Act (Act VIII 2021).

## **PART 4 – GENERAL ASSEMBLY**

### **17. Broad Principle**

**17.1** The General Assembly is the supreme court of the Church in matters of Church law, doctrine and practice. It sets a strategy for national agencies of the Church. Its decisions (or those of its delegated bodies) in appeals are final. Its decisions in matters spiritual are not subject to review by any civil court.

**18. Functions and Responsibilities**

**18.1** The General Assembly has legislative, judicial and administrative functions and responsibilities. Amongst other things, the General Assembly shall:

- (1) Meet and debate and decide upon a range of issues brought to it by commissioners, Standing Committees, Presbyteries and other component elements of the Church.
- (2) Appoint and direct its Standing Committees and hold them to account.
- (3) Pass, amend and repeal Acts and Regulations and agree sections of deliverance.
- (4) Exercise oversight of Presbyteries.
- (5) Be the final court of appeal in certain matters, save where that function has been delegated as set out in more detail in section 20.1 below.
- (6) Welcome and converse with delegates from other denominations in the UK and from churches in other countries.

**18.2** Through exercising these functions and responsibilities, the General Assembly shall aim to:

- (1) Provide general order to the life of the whole Church of Scotland.
- (2) Create a sense of belonging and occasion for commissioners from across the Church and in doing so provide support, inspiration and information to members.
- (3) Celebrate being a national Church and a part of the Universal Church.
- (4) Provide a platform from which to increase the public profile of the work of the Church.

**19. Meetings of the General Assembly**

**19.0.1** Meetings of the General Assembly may be held in-person, online or in hybrid form, ie with some members present in-person and others simultaneously present online. Each of in-person, online or in hybrid form is referred to as a “format” in this section 19.0.

**19.0.2** The Assembly Business Committee shall in its Report propose the date for, meeting place and format of the next General Assembly. The General Assembly shall in its closing session pass an Act appointing the next General Assembly, in terms of the decision made under the Report of the Assembly Business Committee.

**19.0.3** Where it subsequently becomes apparent that the date, meeting place and/or format specified by one Assembly for the next Assembly should be reconsidered, the Legal Questions Committee shall call a Commission of Assembly in terms of the Commission of Assembly Act (Act VI 1997) and the Assembly Business Committee shall bring forward alternative proposals regarding date, meeting place and/or format for consideration by the Commission.

**19.0.4** The Assembly Business Committee shall be responsible for making the practical arrangements for the holding of a General Assembly, in line with the decisions of the previous Assembly or a subsequent Commission of Assembly.

**19.0.5** Where a meeting of the General Assembly is online to any extent, the Moderator shall ensure that those attending can participate, debate and vote as set out in the Standing Orders.

**19.0.6** At its closing session, that General Assembly shall be dissolved.

**19.1 Procedure at Meetings**

**19.1.1** The Standing Orders shall make provision for procedure at sessions of the General Assembly.

**19.1.2** An Order of Proceedings, containing amongst other things a proposed Order of Business, the Roll of Commissioners and the text of the Standing Orders, shall be sent to Commissioners in advance of the General Assembly, in terms of the Standing Orders.

**19.1.3** The Standing Orders shall be published on the Church of Scotland website.

**19.1.4** Only the General Assembly may amend the Standing Orders.

**19.1.5** The Standing Orders shall apply to Presbyteries and Kirk Sessions, in a form incorporating changes necessary to their circumstances, where such courts have not agreed standing orders of their own. Alternatively, Presbyteries and Kirk Sessions may agree and put in place their own standing orders provided these are not incompatible with Church law.

**19.2 Moderator**

**19.2.1** The Moderator shall be appointed in terms of the Nomination of the Moderator of the General Assembly Regulations (Regs I 2013).

**19.2.2** The Moderator of the General Assembly shall hold office from the time of his or her election by the General Assembly until he or she demits office upon the election of his or her successor. In the event of the death or supervening incapacity of the Moderator during his or her year of office, one or more former Moderators shall be invited by the Assembly Business Committee to fulfil the duties of the office until the opening day of the next General Assembly.

**19.2.3** The Moderator may appoint Chaplains to provide advice and support throughout his or her term of office.

**19.2.4** The Moderator shall be responsible for moderating sessions of the General Assembly and for all acts of worship at the Assembly. The Moderator shall fulfil other duties as set out in the Office of the Moderator of the General Assembly Regulations (Regs II 2013).

**19.2.5** The Moderator while in the chair has a casting vote but no deliberative vote.

**19.3 Quorum**

**19.3.1** The quorum of the General Assembly shall be thirty-one, of whom not fewer than sixteen shall be Ministers. Further provision as to quorum shall be set out in the Standing Orders.

**20. Continuing Authority of the General Assembly, Delegation of Authority and Method of Accountability**

**20.1** Notwithstanding the dissolution of a particular gathering of the General Assembly at its closing session, the General Assembly’s authority continues, in terms of the Acts, Regulations, decisions and instructions made, and the powers delegated which may include the following:

- a) To certain judicial bodies established by the General Assembly to act as the final arbiter in certain types of appeal<sup>[xiii]</sup>. The decisions of these judicial bodies shall be reported to the next General Assembly by the provision of minutes to the General Assembly.
- b) To certain Standing Committees to continue work and make decisions in its name. Activities undertaken and decisions so made shall be reported back to the General Assembly.
- c) To appoint and instruct others such as Special Commissions or Special Committees to carry out work on its behalf. Such delegates shall report back to the General Assembly on their work.
- d) To the Legal Questions Committee, through its Secretary, the Principal Clerk, to ensure compliance with Church law in the periods between meetings of the General Assembly.
- e) Between General Assemblies, to the Commission of Assembly in terms of the Commission of Assembly Act (Act VI 1997). The decisions of the Commission shall be reported to the next General Assembly.

**20.2** The Standing Committees of the General Assembly<sup>[xiv]</sup> shall be determined from time to time by the General Assembly and listed in the Standing Orders. The delegated authority of Standing Committees may only be amended with the approval of the General Assembly or of a Commission of Assembly.

**21. Membership of the General Assembly**

**21.0.1** The General Assembly shall be composed of Ministers, Deacons and Elders commissioned by Presbyteries to that role, together with other members by virtue of office (*ex officio*). The Standing Orders shall make provision for other attendees at the Assembly, such as delegates, visitors, corresponding members (Correspondents) and youth representatives.

**21.0.2** The Commissioners from Presbyteries shall be appointed as follows:

**21.1 Ministers**

**21.1.1** The number of Ministers to be appointed as commissioners by each Presbytery shall be one in every five or part of five of the sum of (a) the total number of charges, whether vacant or not, in the Presbytery and (b) the total number of other Ministers who are members of Presbytery by virtue of being in appointments qualifying them for such membership in terms of this Act, provided that, for the avoidance of doubt, Ministers who are members of Presbytery by virtue of being in category R shall not be included in the above total for the purposes of calculating the number of commissioners, but shall be eligible to be appointed as commissioners. Only Ministers who are members of the appointing Presbytery shall be eligible to hold commissions as Ministers.

**21.2 Elders**

**21.2.1** The number of Elders to be appointed as commissioners by each Presbytery shall be equal to the number of Ministers appointed in terms of section 21.1.1 above. Only Elders who are members of Kirk Sessions or New Charge Core Groups within the boundaries of the appointing Presbytery, or who are elected members of Presbytery, shall be eligible to hold commissions as Elders.

**21.3 Deacons**

**21.3.1** The number of Deacons who may be appointed as commissioners by each Presbytery shall be one in every five, or part of five, of those who are members of Presbytery by virtue of being in appointments qualifying them for such membership in terms of this Act, provided that, for the avoidance of doubt, Deacons who are members of Presbytery by virtue of being in category R shall not be included in the above total for the purposes of calculating the number of commissioners, but shall be eligible to be appointed as commissioners. Only Deacons who are members of the appointing Presbytery shall be eligible to hold commissions as Deacons.

**21.4 Failure to Appoint**

**21.4.1** Each Presbytery shall normally be expected to appoint its full number of commissioners each year; but in the event of failure to do so the Presbytery concerned shall submit to the Clerks of Assembly upon request a statement of the reason for such failure, and the Committee on Commissions may, if not satisfied with the reason given, report accordingly to the General Assembly.

**21.5 Office-Holder Members**

**21.5.1** The General Assembly shall appoint a Principal Clerk, a Depute Clerk (together the Clerks of Assembly), a Procurator and a Law Agent, who upon appointment shall each take the oath *de fidelitate*<sup>[xv]</sup>. In the event of a vacancy in office during a General Assembly, an interim appointment may be made by the General Assembly.

**21.5.2** The Clerks of Assembly, Procurator, and Law Agent, together with the Convener and Vice-Convener of the Procedure Committee upon their election, shall be members of the General Assembly by virtue of office (*ex officio*).

**21.5.3** The Moderator of the General Assembly shall, upon election, be by virtue of office a member of the General Assembly, and shall also, by virtue of having held that office, be a member of the General Assembly during which his or her demission from office takes place.

**21.5.4** The five most recent past Moderators who are (i) eligible to receive a Commission, and (ii) not members of the Assembly by virtue of section 21.5.3 or otherwise members by virtue of office (*ex officio*), shall be members of the General Assembly by virtue of office. They shall be appointed in addition to their Presbytery’s number of Commissions



in terms of section 21.1 but no equalizing Minister or Elder shall be appointed. Their Presbytery shall remain entitled to give Commissions from amongst their allocation in terms of section 21.1, 21.2 or 21.3 above to any other former Moderators eligible to be commissioned.

**21.6 Vacancies between General Assemblies**

**21.6.1** In the event of the occurrence of a vacancy in the office of Principal Clerk, Depute Clerk, Law Agent or Procurator between General Assemblies, an interim appointment shall be made until the General Assembly next meets.

**21.6.2** In the event of the occurrence of a vacancy in the office of Procurator of the Church between General Assemblies and until an interim appointment may be made, the following provisions shall take effect:

- a) All communications which are appropriate to the duties of the Procurator shall be addressed to the Clerks of the General Assembly.
- b) Where by an Act of Assembly, or by custom, any duty falls to be discharged by the Procurator, the Law Agent shall have power to discharge such duty.

**22. Relationship with other Church Courts**

**22.1** The General Assembly:

- a) shall be populated mainly by commissioners sent by Presbyteries in terms of the provisions set out above;
- b) has the power to instruct Presbyteries and Kirk Sessions through its legislation and deliverances; and
- c) shall be the final court of appeal from decisions of Presbyteries (save as provided above).

**22.2** The General Assembly shall exercise powers of oversight of Presbyteries and these may be exercised generally, or as specified in legislation.

**22.3** Reciprocally, the General Assembly shall hear from Presbyteries on matters of concern to them. A Presbytery which wishes to raise a matter of concern with the General Assembly may do so in the form of the style Overture to be found in Guidance. An Overture from a Presbytery must be submitted to the Clerks of Assembly in accordance with the procedure and timing set out in the Standing Orders.

**22.4** At the General Assembly, an Overture may be presented by a member of the Overturing Presbytery, whether or not he or she is a Commissioner. If an Overture is presented by a member of the Presbytery who is not a Commissioner, he or she shall have the right to speak to and to answer questions upon the Overture, in addition to a Commissioner from that Presbytery, but he or she shall not have the right to speak on any other matter or to vote.

**PART 5 – DEFINITIONS AND INTERPRETATION**

**23. Definitions**

**23.1** For the purposes of this Act:

- (1) the “boundaries” of a Presbytery shall mean the territorial extent of a Presbytery in Scotland, in terms of its constituent parishes.
- (2) “Church law” shall mean Acts and Regulations of the General Assembly and instructions of the General Assembly.
- (3) “Deacon” shall mean an individual who has been ordained to ministry as defined in the Deacons Act (Act VIII 2010).
- (4) “Elder” shall mean a person who has been ordained to the office of elder, who is in good standing and who is currently a member of a Kirk Session or a Presbytery in terms of section 13.3.4(b).<sup>[xvi]</sup>
- (5) “Financial Board” shall mean the body responsible for managing the finances of a congregation, and may include a Congregational Board, Deacons’ Court, Committee of Management and/or Kirk Session.
- (6) “format” when referring to a meeting, shall mean in-person, online or in hybrid form, hybrid meaning some people present in-person and some simultaneously online.
- (7) “Minister” shall mean a Minister of Word and Sacrament as defined in section 1(2) of the Parish Ministry Act.
- (8) “Mission” shall mean the mission of Jesus Christ as expressed in the Five Marks of Mission, namely:
  - a) To proclaim the Good News of the Kingdom,
  - b) To teach, baptise and nurture new believers,
  - c) To respond to human need by loving service,
  - d) To seek to transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation, and
  - e) To strive to safeguard the integrity of creation and sustain and renew the life of the earth.
- (9) “New Charge Core Group” has the meaning given to it in New Charge Development Act (Act XIII 2000).
- (10) “parish” shall mean a geographical area defined by boundaries set by the Presbytery.
- (11) “the relevant Presbytery” shall mean the Presbytery whose authority extends across all parishes sitting within the boundaries of that Presbytery.
- (12) “Standing Committee(s)” shall mean those set out in the Standing Orders of the General Assembly.
- (13) “Standing Orders” shall mean the framework of decision-making adopted by a court.
- (14) “writing” shall mean in hard copy or electronic form.

**24. Interpretation**

**24.1** A Minister shall be eligible for membership of the courts of the Church only as a Minister.

**24.2** A Deacon shall be eligible for membership of the courts of the Church only as a Deacon.

**24.3** Being present at a meeting means being physically present, being on a telephone line or having an online connection, whether audio only or audio and video.

**24.4** In line with the Appeals Act (Act I 2014), the term “appeals” includes Dissent and Complaint.

**24.5** A “court” refers to a gathering, being a Kirk Session, Presbytery or General Assembly, where there is authority to make collective decisions.

**24.6** “Moderator” includes an Interim Moderator.

**24.7** For the purposes of this Act, the term, “civil law” includes state law derived from sources such as the UK Parliament, Scottish Parliament and common law, and includes criminal law.

## **PART 6 – GENERAL**

### **25. Provisions Applicable to all Courts**

**25.1** Minutes of courts shall be signed by the Moderator who occupies the Chair at the time when the Minutes are submitted for approval. They shall also be authenticated by the signature of the Clerk of the court.

**25.2** In the case of Committees, the Minutes shall be signed by the Convener and Clerk of the meeting at which they are approved.

**25.3** Petitions shall in all cases be presented to the court of first instance-that is to say, to the lowest court which has power to grant the prayer of the Petition.

### **26. Miscellaneous Provisions**

**26.1** Kirk Sessions, Presbyteries and Standing Committees shall put in place a conflict of interest policy, a bribery and procurement policy and a whistleblowing policy, all in terms of those recommended by the Law Department.

**26.2** This Act does not apply to New Charges which shall continue to be subject to the provisions of the New Charge Development Act (Act XIII 2000).

**26.3** The provisions of section 5.2.4 as to meetings shall apply, subject to necessary changes, to Financial Boards as they do to Kirk Sessions.

**26.4** Lower courts shall not meet at the same time that meetings of higher courts are taking place. A Kirk Session may meet while the General Assembly is in session, provided that none of its members are commissioners. Committees of Kirk Sessions and of Presbyteries may meet while a superior court is in session provided that none of those entitled to attend is a member of, or commissioned to, the superior court.

**26.5** This Act shall apply to the Presbytery of International Charges subject to the terms of the International Presbytery Act (Act II 2016) and with such changes to practice as are required by the particular circumstance.

**26.6** 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.

### **27. Commencement date, repeal and transitional provisions**

**27.1** This Act shall come into force on [ ]. The existing Church Courts Act (Act III 2000) shall be repealed as at that date.

**27.2** The following Acts of Assembly shall also be repealed as at the date this Act comes into force:

a) Virtual Attendance at Meetings Act (Act VI 2018).

**Note: Guidance to accompany the new Act is to be drafted, with sample minutes etc.**

## **References**

- [i] These are expanded on in Guidance.
- [ii] The text concerns the faithful administration of the office: “I swear that I will be faithful to the duties of.....”, naming the office concerned.
- [iii] Reference should be made in particular to the Church Finance Act (Act V 1989), the Congregational Finance Regulations (Regulations II 2016), the Care of Ecclesiastical Properties Act (Act VII 2007) and the Work at Ecclesiastical Buildings Regulations (Regulations I 1998).
- [iv] Guidance will highlight particular Acts and Regulations of Assembly of which a Session Clerk should be aware
- [v] This includes the Property Register and Manse Condition Schedule.
- [vi] For example, this might be granted to a treasurer who is not an elder.
- [vii] Although such a person would retain the status of Elder.
- [viii] ie there should be separately minuted decisions and two or more Kirk Sessions may not make joint decisions.
- [ix] The expectation is that those who have their own Minister receive pastoral care from them.
- [x] A Presbytery Review process is under development.
- [xi] The text concerns the faithful administration of the office: “I swear that I will be faithful to the duties of.....”, naming the office concerned.
- [xii] See Guidance for further details.

- [xiii] Currently these are (i) the Appeals Committee of the Commission of Assembly and the Judicial Commission in terms of the Appeals Act (Act I 2014), (ii) the Ministries Appeal Panel in terms of the Ministries Appeal Panel Act (Act VII 2007) and (iii) reviews held under the Presbytery Mission Plan Act (Act VIII 2021).
- [xiv] These include in practice bodies of different names and functions, such as Forums, Councils, Committees, Panels, Commissions and Trusts.
- [xv] The text concerns the faithful administration of the office: "I swear that I will be faithful to the duties of.....", naming the office concerned.
- [xvi] Such a person may in daily practice be described as a ruling elder.

**Appendix C**

**Table of amendments made to the draft Church Courts Act**

**CHANGES MADE TO THE CCA AS A RESULT OF CONSULTATION BETWEEN GA22 AND GA23**

Section number	Change	Notes
Preamble & (what was) 1.2	Wording of 4 <sup>th</sup> Article Declaratory moved to become a recital and the first sentence repeated in full.	
2.2, 3.1(3) & 10.1	"Oversight" substituted for "supervision".	
2.2 & 3.1(1)	Wording adjusted to reflect that "Mission" as defined means the Five Marks of Mission.	
3.1(3)	Wording added to include the offering of pastoral care as appropriate across the parish.	
3.1(6)	Wording adjusted to cover "managing" of membership.	
3.1(8)	Reference to data protection law added.	
3.1(12)	Wording added as to ministries for children, young people and families.	
3.1(16)	Reference to trustees' report added. Also footnote added to note that rolls and records include the Property Register and Manse Condition Schedule.	
3.1(18)	Charity law section expanded.	
3.1(19)	Safeguarding section expanded.	
4.3 & 11.3	New clause added as to rescission or amendment of delegation.	
5.0 & 12.0.2	Reference to disciplinary matters added.	
5.1 & 12.1	Wording amended in both places to conform the sections on Kirk Session meetings more appropriately to those on Presbytery meetings and to deal better with ordinary vs specific purpose meetings.	
5.1.6	Wording clarified as these are things the Session must do across a year, not all in one meeting.	
5.2.2 & 12.2.2	Deletion of wording as to circulating draft minute promptly to all present.	<i>This should not preclude prompt preparation of a draft minute!</i>
5.2.5	Wording added as to provision of weblink; also that a person who is not a member of the Session may have standing permission to speak.	Eg if a non-elder treasurer.
5.3.2.1	Wording added that an interim moderator shall normally be appointed where the minister is to be absent for more than 6 weeks.	
5.4.2	Wording adjusted to clarify which Assessor Elders are charity trustees and that their appointment shall be reviewed annually.	
6.2	Wording added that in a team ministry, all ministers shall be members of the Kirk Session.	
6.4	Wording added that Correspondents are not charity trustees.	

Section number	Change	Notes
6.5	Wording on Correspondents conformed with section 14.1.	
10.1(27)	Wording added as to trustees' duties.	
10.1(28)	Reference to trustees' report added.	
10.1(30)	Word "annual" added.	
Also in 10.1	Paragraph on a conflict of interest policy moved to (25).	
12.2.2	Deletion of recording of apologies for Presbytery meetings.	
12.2.6	Note added that this section does not preclude other rights to address Presbytery.	Eg in cases.
12.2.7	Wording added that Presbytery Standing Orders if existing to be published on the Presbytery's website.	
13.0.2	Wording added to confirm who are charity trustees of a Presbytery.	
21.5.4	Wording updated to reflect the terms of the Church Courts Overture passed by GA 2022.	
26.1	Reference added to whistleblowing policy.	
26.3	Wording added to confirm that Financial Boards may meet online.	
26.4	Provision added that Committees of Kirk Sessions and of Presbyteries may meet while a superior court is in session provided that none of those entitled to attend is a member of, or commissioned to attend, the superior court.	
26.5	Wording adjusted for the Presbytery of International Charges.	

## Appendix D

### Act Amending the Ministers and Deacons in Same Sex Civil Partnerships and Same Sex Marriages Act (Act I 2015)

#### [ ] ACT AMENDING THE MINISTERS AND DEACONS IN CIVIL PARTNERSHIPS AND SAME SEX MARRIAGES ACT (ACT I 2015) (AS AMENDED)

Edinburgh, [ ] May 2023, Session [ ]

The General Assembly hereby enact and ordain that the Ministers and Deacons in Civil Partnerships and Same Sex Marriages Act (Act I 2015), as amended, shall be further amended as follows:

1. *Retitle the Act as the "Ministers and Deacons in Same Sex Civil Partnerships and Same Sex Marriages Act (Act I 2015)".*
2. *In section 1(a), at the end of the fourth sentence add "Pioneer Minister or Associate Minister".*
3. *Delete the existing section 1(c) and substitute:  
"same sex civil partnership" shall mean a civil partnership entered into between persons of the same sex which is recognised in terms of the Civil Partnership Act 2004, section 1."*
4. *Throughout the Act for the words "civil partnership" substitute "same sex civil partnership".*
5. *Amend section 1(d) by deleting "Appraisal and Adjustment Act, section 1(b)" and substituting "Presbytery Mission Plan Act (Act VIII 2021), section 1.1(f)".*
6. *Amend section 1(f) by deleting "Appraisal and Adjustment Act, section 10" and substituting "Presbytery Mission Plan Act (Act VIII 2021), section 7".*
7. *In section 2(3) delete the words "Kirk Sessions in terms of sections 3, 4 and 5 of this Act only" and substitute "(i) Kirk Sessions in terms of section 3 of this Act, and (ii) Presbyteries in terms of section 4A of this Act".*
8. *Delete the existing section 3(5) and (6) and substitute:  
"(5) To be effective, a decision to depart shall require to be taken in respect of each induction or appointment and may only be taken as follows:  
(a) A meeting of the Kirk Session shall be held to take a vote on the matter. The date and time of such meeting, and its purpose, must be properly intimated to the congregation on at least two Sundays prior to its date.  
(b) At the Session meeting, a vote shall be taken on whether or not to depart.*

- (6) A meeting held in terms of section 3(5) shall be constituted in prayer in accordance with the law and practice of the Church. Only those members of the Kirk Session present at the meeting shall be entitled to vote. Voting shall be by secret ballot using voting papers printed in the form of Schedule 1 hereto. Intimation of the meeting shall be in terms of the edict annexed in Schedule 2 hereto."
9. *Amend section 3(8)(b) by deleting "Appraisal and Adjustment Act, section 11(1)" and substituting "Presbytery Mission Plan Act (Act VIII 2021) section 8.2".*
  10. *Add a new section 3(8)(c):*  
 "In the case of a Team Ministry, a decision to depart or not to depart, once taken, shall apply to all other posts within the Team Ministry as and when such posts become vacant for the following five years, unless there is a request at an earlier date for the matter to be revisited and a new vote held. Such a request must be signed by a majority of the ruling elders on the Kirk Session, or where the ruling Elders exceed nine in number, at least one-third with a minimum of five."
  11. *Delete the last sentence of section 4.*
  12. *Add a new section 4A:*  
 "Where a Presbytery is considering the appointment of a minister who is in a same sex marriage or same sex civil partnership as Interim Moderator to a charge, written intimation of the proposed appointment shall be given to the Kirk Session(s) of the charge. If, within fourteen days of the date of the sending of the intimation, the Session Clerk sends to the Presbytery Clerk with the approval of a majority of the Session a notice requesting that the appointment does not proceed, no further steps in relation to the appointment shall be taken."
  13. *Amend section 5(2) to read:*  
 "Once ordained, a minister or deacon who is in a same sex civil partnership or a same sex marriage shall have the same status, rights and responsibilities as any other minister or deacon respectively, except that he or she (i) may not be inducted or appointed to a congregation the Kirk Session of which has not decided to depart in terms of section 3, and (ii) may not be appointed as an Interim Moderator if a notice from the Session has been sent as provided for in section 4A."
  14. *Amend the third and fifth paragraphs of the edict in Schedule 2 to read as follows, and delete the fourth paragraph of the edict:*  
 "The purpose of the Kirk Session meeting just intimated will be for the Kirk Session to decide whether or not to depart from the Church's practice in relation to human sexuality in order for applications for [*\*the current vacancy / \*the proposed appointment of a [insert title of appointment]*] to be considered from, amongst others, individuals who are in a same sex civil partnership or a same sex marriage.  
 The decision will be determined by the votes of a majority of those present and entitled to vote."

## Appendix E

### Principles for the Presbytery Review Process

On a pro forma devised by the Presbytery Review Committee, the Presbytery will be asked to provide:

- factual and statistical information to allow the Review Group to grasp something of the geography and demographics of the area;
- confirmation that specific requirements laid upon it by Church and civil law have been complied with;
- a description of the life and work of the Presbytery in terms of the Functions and Responsibilities of Presbyteries as outlined in the Church Courts Act, including the ways in which it resources local congregations, acts as the voice of the Church in relation to wider society, and engages with the processes of the General Assembly;
- an outline of the shared vision and guiding principles for the way ahead in the life and work of the Presbytery leading into as detailed as possible an anticipation of what lies ahead and how the Presbytery hopes to meet the specific challenges it faces.

On such visits and meetings as they may consider relevant and over such timescale as may be required, the Presbytery Review Group will enter into conversation with groups and individuals in the Presbytery to explore further any aspects of the life and work of the Presbytery they may wish to in order to learn more about work that is going well or where there may be problems and to help develop the framework for forward planning.

## Appendix F

### Act amending the Appeals Act (Act I 2014)

#### [ ] ACT AMENDING THE APPEALS ACT (ACT I 2014) (AS AMENDED)

Edinburgh, [ ] May 2023, Session [ ]

The General Assembly hereby enact and ordain that The Appeals Act (Act I 2014), as amended, shall be further amended as follows:

1. *In section 14(2) of the Act, delete "twenty" and substitute "thirty".*