

LEGAL QUESTIONS COMMITTEE MAY 2022

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, (ii) section 4 and Appendix B of the Report of the Assembly Business Committee and (iii) the Supplementary Report of the Assembly Business Committee. (*Section 2 – Amendments to Standing Orders*)
3. Agree to send the draft Church Courts Act as set out in Appendix B to Presbyteries for consultation and direct that comments be sent to the Principal Clerk by 31 December 2022. (*Section 3 – Draft Church Courts Act*)
4. Instruct the Committee, 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. (*Section 4 – Same Sex Marriage*)
5. Instruct the Committee to continue with the development of Presbytery Review and to bring a Presbytery Review Act to the General Assembly of 2024. (*Section 5 – Presbytery Review*)
6. Pass an Act amending the Presbytery Mission Plan Act (Act VIII 2021) as set out in Appendix D. (*Section 7 – Aspects of the Presbytery Mission Plan Act*)
7. Pass an Act amending the Appeals Act (Act I 2014) as set out in Appendix E. (*Section 8 – Appeals Act drafting*)
8. Pass an Act amending the Intimation of Appeals Act (Act VI 2004) as set out in Appendix F. (*Section 8 – Appeals Act drafting*)
9. Pass an Act amending the Commission of Assembly Act (Act VI 1997) as set out in Appendix G. (*Section 9 – Assembly Online*)
10. Note that the following arrangements have proved useful:-
 - (a) the Vacancy Protocol and the arrangements for Presbyteries and Kirk Sessions to meet and vote by video-conferencing or audio-conferencing, agreed by the Commission of Assembly on 7 July 2020,
 - (b) the three Protocols agreed by the General Assembly of October 2020 (the Congregational Meetings on Bases of Adjustment Protocol, the Congregational Meetings for Adopting the Unitary Constitution Protocol and the Congregational Meetings on Sale or Disposal of Church Buildings Protocol),
 - (c) the arrangements for Financial Boards to meet and vote by video-conferencing or audio-conferencing agreed by the General Assembly of October 2020, and
 - (d) the arrangements agreed by the General Assembly of 2021 in relation to appointments and elections to Congregational Boards;
 and, therefore, continue all of these arrangements as required until the General Assembly of 2023, provided that in the case of the Congregational Meetings on Bases of Adjustment Protocol, this shall be read as relating to section 10.2 of the Presbytery Mission Plan Act (Act VIII 2021). (*Section 10 – Covid-19 Protocols*)
11. Pass an Act amending the Discipline Act (Act I 2019) as set out in Appendix H. (*Section 11 – The Discipline Act*)
12. Repeal the Licensing of Probationers Act (Act XI 1932), the Trials for Licence Act (Act VIII 1936) and the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007). (*Section 12 – Repeal of legislation*)
13. Instruct Kirk Sessions to take steps to adopt a conflict of interest policy in the form prepared by the Law department (with any future changes which may be made to the style policy to reflect changing guidance or best practice) as soon as may be practicable and in any event by 31 December 2022. (*Section 13 – Conflict of interest policy*)

Report

1. THIS YEAR'S WORK

1.1 General

1.1.1 The Committee's remit 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.

1.1.2 This has been a busy year for the Committee and in particular for the Principal and Depute Clerks along with the Convener.

1.2 Reforming Church Law

1.2.1 In the run up to the 2021 General Assembly considerable effort was put into the Presbytery Mission Plan Act. As well as the detailed provisions of the Act, the Committee believes that this piece of legislation was a significant step in reforming Church law in terms of language and presentation. We hope that in word and in style it is more easily understood by those who will use it most – Presbytery and Kirk Session office bearers.

1.2.2 There is now the consequential task of assisting with the Guidance material which will sit beside the Act.

1.2.3 During the ensuing months we have attempted to take a similar approach in the new Church Courts Act which forms part of this Report.

1.2.4 There are other pieces of legislation which will also need to be revised or replaced and this will continue to be a significant time and energy commitment for staff and volunteers alike.

1.3 Collaborating with other Standing Committees and Agencies

1.3.1 Changing times mean that the agencies of the General Assembly need to adapt their ways of working and often this needs to be expressed in amended or replacement legislation.

1.3.2 There has been close cooperation with the Faith Nurture Forum as they have sought changes to some of the Acts of the General Assembly which provide shape to their work. The fruits of these endeavours may be seen in their Report and deliverance.

1.3.3 Considerable time and energy have also been devoted to working with the Presbytery of International Charges as they look at a future changed at least in part by the impact of Brexit. Some of that can be seen in their Overture.

1.3.4 The Theological Forum are taking forward a major piece of work on how, within the Church's constitutional framework, our shared faith is stated. We have been happy to assist with the type of questions around procedure which are raised by any proposed alterations to the Articles Declaratory.

1.4 Covid-19

1.4.1 The Committee and the Clerks have helped the Church find ways of working during pandemic days when in person meetings were not legally possible. These have ranged from protocols for on-line vacancy procedure to new Standing Orders for virtual meetings of the General Assembly and the Commission of Assembly. Now the challenge is to support the Church as she emerges from Covid restrictions and decides what to keep from the lessons learned and what from our past practice we might usefully resume.

1.5 Consultations by the Scottish and UK Governments

1.5.1 Aside from working with those framing the Scottish Government's Covid-19 legislation and then dealing with its impact on the life of the Church, Committee members are working with representatives of the Faith Impact Forum on the UK consultation on proposed changes to Human Rights legislation.

1.5.2 We have also been asked for comment by the Scottish Government on proposed changes to the Scots laws relating to marriage and civil partnership.

1.6 The Annual Inspection of the Records of Standing Committees of the General Assembly

It has not been possible to carry out these checks in the last two years due to the Covid-19 pandemic. The Committee hopes to deal with the 2020 and 2021 documents later this year and resume normal service in February 2023.

1.7 The Annual Inspection of Presbytery Records

The Committee had intended to resume this inspection following the adoption by the General Assembly of 2021 of our new remit. Again, Covid has got in the way and the Committee hopes to do as it has been asked in 2023.

2. AMENDMENTS TO STANDING ORDERS

2.1 Some redrafting of SO 122 is proposed to provide for Conveners and Vice-Conveners of legal bodies to serve further terms of four/three years respectively after their first term. These are highly qualified people with specific expertise and once they have been appointed, the Committee is normally keen to reappoint them where they are agreeable to continuing in the role. The amended SO is set out in Appendix A.

2.2 The Report of the Assembly Business Committee also 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 Appendix B 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.

2.3 Further changes to Standing Orders will also be required following the decisions of the Commission of Assembly which met on 23 March. These will be contained in a Supplementary Report of the Assembly Business Committee.

3. DRAFT CHURCH COURTS ACT

3.1 A draft Church Courts Act is set out in Appendix B. This is more than an updating of earlier legislation and aims to be comprehensive in its treatment of each court and the relations among them.

3.2 The intention has been to draft material which is both clear and understandable, removing archaic words and phrases – including much Latin – and where possible describing certain aspects in greater detail, though at the cost of a longer Act. A consultation process has been undertaken over the past two years with the Assembly Business

Committee, some Session Clerks, the Presbytery Clerks' Forum, the Solicitor and the Procurator with the work supervised by the Committee. Insights from these meetings have been invaluable in producing this material.

3.3 The draft Act does not intend to innovate other than in the areas outlined below, but seeks to articulate current practice and describe rights and duties more fully. Neither does it seek to replicate existing Church law but, rather, to point to relevant Acts and Regulations.

3.4 The Act attempts to deal with each court within a similar structure in Parts 2, 3 and 4. Delegation of authority is described more fully, to give greater direction to Kirk Sessions and Presbyteries. The continuing authority of the Assembly is described in greater detail along with those bodies which exercise it. Functions and responsibilities of each court are articulated to reflect current understandings and good practice. Provisions surrounding meetings reflect what is understood to be current good practice and, in addition provide permission to meet online or in a hybrid format.

3.5 It is proposed to retain the minimum age of eldership at eighteen, primarily due to the not inconsiderable obligations imposed upon elders by Church law and trustee responsibilities imposed by state law. Notwithstanding this, there is no minimum age of those who may be made Correspondents, permitting the views of younger people, among others, to be heard.

3.6 A mechanism to permit elders who are unable to relinquish their office of ruling elder due to a lack of capacity is introduced in a process which largely reflects the existing Act. The possibility of accepting a standing apology in advance is offered as a practicable alternative to granting leave of absence.

3.7 The relations among courts and a brief description of provisions relating to appeals are also provided.

3.8 The terminology of Presbytery meetings *in hunc effectum* and *pro re nata* is dispensed with, replaced by Special Purpose meetings which may be distinguished from Ordinary Meetings.

3.9 Provisions regarding membership of Presbytery by elders reflect current legislation, except that it is proposed to add a provision to enable an ordained elder who is not currently a member of any Kirk Session within the boundaries of Presbytery to be a member of that Presbytery provided they are in good standing. This provision may enable some to exercise specific gifts in the context of regional rather than local church and is considered reasonable given Presbytery's responsibility – rather than that of a Kirk Session – for supervising the discipline of elders.

3.10 Provisions have been added to enable the calling of a General Assembly in a different form from that envisaged at the dissolution of the prior Assembly through the decision of the Commission of Assembly (*see also further comment about this in section 9 below*).

3.11 The draft Act has the potential to include the amendments proposed by the Church Courts Act Overture which is being considered by this General Assembly.

3.12 The Presbytery of International Charges is bound by this Act as amended by other legislation, which variation is necessary given its unique situation and the varying jurisdictions across which it operates.

3.13 The draft Act is presented, not under the Barrier Act, but as a consultative document. The intention is that, following scrutiny at this Assembly, the material will be sent to Presbyteries and other interested groups with an invitation to engage in constructive dialogue. This will enable a further, refined, draft of the Act to be proposed to the Assembly in 2023. Barrier Act process, a more binary matter, is arguably less flexible and provides fewer opportunities for consultation. In the view of the Committee, such innovations as are contained in the draft Act are permissive and not mandatory and consequently Barrier Act process may be regarded as not essential. It is open to this Assembly to adopt a different course, sending the matter down under the Barrier Act. Arrangements have been made to enable the text to be sent down to Presbyteries as an Overture for voting and reporting in the usual way, if this Assembly so determines. The consultation process envisaged nonetheless offers opportunity for scrutiny and requires the approval of two General Assemblies and, further, enables dialogue with Presbyteries and other interested groups. A consultation process is therefore the Committee's preferred option.

4. SAME SEX MARRIAGE

4.1 The Report to the 2021 Assembly advised that, in the event the Same Sex Marriage Overture was approved by a majority of Presbyteries and by this General Assembly, work would continue on a Guidance document. This material is in course of preparation and, should the Overture be approved by this Assembly, shall be issued to Presbytery Clerks and made available online over the summer to assist in the practical operation of the Act's provisions.

4.2 The Committee is also conscious that the Ministers and Deacons in Civil Partnerships and Same Sex Marriages Act (Act I 2015) has not been considered since amended in 2016 to incorporate changes to civil law and proposes, in consultation with the Faith Nurture Forum and the Theological Forum, to undertake a review of this Act in light of experience and informed by the outcome regarding the Same Sex Marriage Overture at this Assembly.

5. PRESBYTERY REVIEW

5.1 The concept of Presbytery Review was introduced at the General Assembly of 2016 when, on the initiative of a commissioner, this section was added to the Legal Questions Committee's deliverance: -

"Regret the absence of any review or appraisal process which pertains to the work of Presbyteries and instruct the Committee, jointly with the Council of Assembly and in consultation with Presbyteries, to explore the possibility of establishing a Presbytery Review procedure which complements the process of Local Church Review and report to the General Assembly in 2017."

5.2 Progress was reported to the General Assembly in 2017 with some initial thoughts on how this might work and what it might achieve.

5.3 In the year following, a pilot of Presbytery Review was carried through with nine Presbyteries on a voluntary basis. The 2018 General Assembly received a description of that process and the Report noted:

“Each of the nine Presbyteries was reviewed and acted as a reviewer. Representatives of the Presbyteries met in February 2018 to reflect on their experiences. The consensus was that Presbytery Review was not only helpful but also essential. There were comments about how the material could be improved and the desirability of being given sufficient notice of a Review to allow planning and preparation. It was noted that at present there was no clear line of accountability for Presbyteries and there was discussion about how the General Assembly might be given some insights into the life of reviewed Presbyteries.”

5.4 Having learned some lessons and with rewritten resources a second cycle was followed through this time with ten Presbyteries. The General Assembly was told that the review had been in three parts:-

1. THE PRESBYTERY TODAY
2. FUTURE PLANS
3. FACTS AND FIGURES

5.5 The experience had been generally seen as positive and helpful which encouraged the Committee to present a section of deliverance which was then approved:-

“Instruct the Committee, in consultation with others, to prepare legislation to ensure that Presbytery Review engages all Presbyteries on a regular basis and to report to the General Assembly of 2020.”

5.6 The General Assembly did not meet in May 2020 due to the pandemic and when commissioners gathered online in October of that year it was to deal with urgent and mainly non-controversial issues to see us through the Covid times.

5.7 In 2021 the virus was still with us but the General Assembly met online for a week and the Committee reported that the 2019 General Assembly had said that the number of Presbyteries should be reduced to around twelve by 2024 and set ambitious targets for these “new” Presbyteries in the context of the Radical Action Plan and the Report of the Special Commission on Structural Reform. The Committee suggested, therefore, that there would be little point in developing a Presbytery Review process for the current pattern of forty two Presbyteries when, in a fairly short period of time, the shape, nature and purpose of Presbytery life would be greatly changed.

5.8 The Committee asked permission to bring forward a scheme of Presbytery Review which would work “in the setting the Church is seeking to create.”

5.9 This section of deliverance was passed:-

“Instruct the Committee, in consultation with others, to continue to develop a process of Presbytery Review and report to the General Assembly of 2024.”

5.10 The Presbytery Reform process has continued apace and we are now moving rapidly towards these new structures. They will have considerable responsibilities and, in time, will need to have the human and financial resources to carry these through.

5.11 The Committee believes that with such responsibility comes accountability and that the General Assembly’s superintending of Presbyteries needs to find expression in a regular and compulsory Presbytery Review process. We believe that this will enhance the life of Presbyteries and be good for the Church.

5.12 The five-yearly reviews will allow a Presbytery to:

- take stock and celebrate what has been achieved
- look forward purposefully to the future, and
- be assured that it is fully compliant with Church and civil law.

5.13 Our outline of the process which we now present in Appendix C gives more details of how this could work in practice.

5.14 It would be our intention to consult more widely on the basis of this outline and to bring a Presbytery Review Act to next year’s General Assembly so that it might be considered alongside the Church Courts Act which is also being proposed.

6. LEGAL COSTS IN DISCIPLINARY PROCEEDINGS

6.1 The Committee last year undertook to review the financial impact of the Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018) on respondents involved in proceedings under the Discipline Act (Act I 2019). In terms of the Act, a respondent is entitled to apply for financial assistance towards the cost of legal representation (a) where a Censure with consent is being accepted and (b) in the conduct of Disciplinary Proceedings under Part 8 of the Act and any subsequent appeal. This assistance is not restricted to ministers. It is available for all categories of respondents i.e. all those subject to discipline in terms of that Act.

6.2 Since Act I 2019 came into force, and at the time of writing, three respondents have accepted a Censure with consent. Of these three individuals, only one applied for financial assistance with legal costs, and was awarded a contribution of 50% of these costs. One case, in which the respondent was an elder, went to a Discipline Tribunal hearing. The respondent did not engage with the process, did not appoint a lawyer and therefore made no application

for assistance with costs. Three cases have been sisted at the investigatory stage because of their interaction with civil or criminal court procedures. Six cases are still at the investigatory stage, at which assistance with legal costs is not available.

6.3 In the light of these statistics, it will be seen that the Legal Aid Regulations have not yet been fully tested in practice and the Committee therefore proposes to keep their operation under review and to report again to a future General Assembly once more cases have reached the stage of disciplinary proceedings and further applications for assistance have been determined.

7. ASPECTS OF THE PRESBYTERY MISSION PLAN ACT

7.1 The Committee has provided input to Guidance issued by the Faith Nurture Forum on the process for preparing Presbytery Mission Plans. Work has also been undertaken to find appropriate people to populate the Mission Plan Review Group, which will implement requests for assistance or review under the Act. Finally, there has been preparatory work to create Guidance on process for those making a request for assistance or review under the Act.

7.2 A short amending Act to the Presbytery Mission Plan Act (Act VIII 2021) is contained in Appendix D, to clarify (i) that the Clerks of Assembly act as Clerks to Mission Plan Review Panels and shall select the members for each Panel and (ii) the term of office for appointees to the Mission Plan Review Group.

8. APPEALS ACT DRAFTING

8.1 At the General Assembly of 2021, the General Assembly instructed the Committee *"to consider bringing proposed amendments to the Appeals Act (Act I 2014) to allow early consideration of the competency and relevancy of any Grounds of Appeal and to bring any proposals to the General Assembly of 2022"*.

8.2 There is no clear mechanism in the Appeals Act for "filtering" the Grounds of Appeal before the Appeal Hearing takes place, no matter how incompetent or irrelevant the Grounds may appear. This means that all Grounds need to be heard and decided upon by the full Appeals Committee/Judicial Commission at the actual Appeal Hearing.

8.3 The Committee has reviewed the appeal process and proposes an amendment to the Rules of Procedure in Schedule 2 to the Act: that the Convener and Vice- Convener at an Appeal Management Hearing, held before the actual Appeal Hearing, may determine that one or more Grounds of Appeal is/are irrelevant and/or incompetent and, where no competent and relevant Grounds of Appeal have been identified, may dismiss the appeal at an Appeal Management Hearing on that basis.

8.4 The existing quorum of the Appeals Committee is fifteen persons and that of the Judicial Commission is three persons. The Committee proposes exceptions to this in the Act to allow the Convener and Vice Convener, a quorum of two, to have the power to dismiss the appeal in its entirety at an Appeal Management Hearing, should no competent and relevant Grounds of Appeal be identified. In the case of the Appeals Committee, a quorum of fifteen out of twenty three can be difficult to achieve in practice, so it is proposed to reduce this to eleven.

8.5 The draft amending Act can be found at Appendix E.

8.6 The opportunity has also been taken to tidy up some other drafting issues in the Rules of Procedure, such as updating references from Presbyterian Commission to Discipline Tribunal, and making clearer provision as to the Respondent's Answers to the Grounds of Appeal. These amendments appear in Appendix E.

8.7 Additionally, an amendment is proposed and appears in Appendix E regarding the composition of the Judicial Panel. This Panel, which is referred to in section 14 of the Appeals Act, supplies persons to serve on the Discipline Tribunal and the Judicial Commission and members to carry out procedural reviews (i.e. serve as Reviewers) under the Discipline Act (Act I 2019). It is currently stated that those on the Panel should be "ministers, elders and deacons" nominated by the Nomination Committee and appointed by the General Assembly. The Committee proposes that members of the Church should also be eligible to join the Judicial Panel. This would enable some persons to be added to the Panel who are willing and able to provide their expertise and experience to the Church. Such persons will still require to satisfy the qualification required by the Appeals Act that *"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"*.

8.8 A final set of amendments are proposed both to the Appeals Act (found in Appendix E) and to the Intimation of Appeals Act (Act V 2004), the latter in Appendix F. These are intended to clarify that the Appeals Act concerns appeals from Presbytery level to General Assembly level, and the Intimation of Appeals Act concerns appeals from Kirk Session/Financial Board level to Presbytery level. There has also been standardisation of the period of fourteen days to intimate an appeal and some tidying up of the provisions covering jurisdiction in the Appeals Act.

9. GENERAL ASSEMBLY ONLINE

9.1 The General Assembly of 2021 invited the Legal Questions Committee:-

".....to prepare legislation enabling all or part of future General Assembly business to be conducted online, and report to a subsequent General Assembly".

9.2 The General Assembly has already met online twice, through force of necessity in the emergency situation caused by the global Covid-19 pandemic. The Church was supportive of the decisions taken in such an emergency situation. Going forward, the Committee is of the view that it would be wise to have a formal process for taking such a decision should the same or another emergency situation arise again.

9.3 Accordingly, the Committee proposes amendments to the Commission of Assembly Act (Act VI 1997), to allow a Commission of Assembly to be called where circumstances require a change to be made to the arrangements for the date, meeting place or format of a General Assembly that were enacted at the close of the previous General Assembly. In such a case, the Committee would call the Commission of Assembly, and the Assembly Business Committee would prepare a Report for the Commission of Assembly to assist its decision making. The amendments to the Commission of Assembly Act would also allow the Commission of Assembly itself to meet in person, online or in a hybrid format. The proposed amendments to the Commission of Assembly Act can be found in Appendix G.

9.4 As part of its drafting of a revised Church Courts Act (*see section 3 and Appendix B of this Report*), the Committee has included provisions which will allow meetings of the Church courts (including the General Assembly) to be held in person, online or in hybrid form. It is envisaged that at each Assembly, the Assembly Business Committee would make recommendations in their Report to assist the General Assembly to make decisions regarding the format, duration and location of the next General Assembly. If approved, these details would become part of the Act appointing the next General Assembly.

9.5 Although the online format of the General Assemblies of 2020 and 2021 was new to commissioners, the Committee believes that this format worked sufficiently well in the circumstances. By the very nature of these online General Assemblies, however, there was a loss of the fellowship that normally accompanies an in person General Assembly. The question of whether the business of the General Assembly received as much scrutiny as it would otherwise have done is one that is hard to answer. The online General Assemblies also required that all commissioners had a certain level of technical expertise. On the other hand, online General Assemblies were the only practicable option in the circumstances, and the Committee is aware that some commissioners appreciated the online format for debate and decision making. The Committee accordingly notes that the factors that would have to be weighed up by the Assembly Business Committee in recommending the format of a General Assembly (outside of an emergency situation where there is little choice in the format) are many and complex, especially when the possibilities include a hybrid as well as a wholly in person or online General Assembly. These include the need to ensure that the format allows physical and/or technical access for all commissioners whether present in person or online and the need to ensure so far as possible that all commissioners can participate equally in debate and decision making.

10. COVID-19 PROTOCOLS

10.1 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 time of writing, the future remains uncertain, so the Committee suggests that these Protocols and arrangements be continued on an “as needed” basis, in the sincere hope that they may be used as needed but may increasingly become unnecessary.

10.2 In the case of the Congregational Meetings on Bases of Adjustment Protocol, this should be read as relating to section 10.2 of the Presbytery Mission Plan Act (Act VIII 2021), rather than section 13(2) of the Appraisal and Adjustment Act (Act VII 2003).

11. THE DISCIPLINE ACT (ACT I 2019)

11.1 A short amending Act is contained in Appendix H, setting out a technical amendment to section 23 of the Discipline Act (Act I 2019).

12. REPEAL OF LEGISLATION

12.1 Probationers are no longer licensed and so some Acts of Assembly which are no longer relevant can be repealed. Similarly, the Ministerial Staffing in the Presbytery of Shetland Regulations (Regs VI 2007) have been superseded by the union of the Presbyteries of Aberdeen and Shetland.

13. CONFLICT OF INTEREST POLICY

13.1 Conflicts of interest affect all types and sizes of organisation. In the charity context, charity trustees must not put themselves in a position where their interests (or those of someone connected to them) may conflict with their duties as a charity trustee. For congregations, a conflict of interest can inhibit free discussion and can lead to decisions which may not be in the best interests of the congregation and which may be open to challenge. It is therefore important that such conflicts are recognised and that provision is made for how they are to be handled. This is best achieved through having a suitable conflict of interest policy in place. The Law Department has prepared a style policy, which can be found on the Church website under Resources/Law department circulars and Kirk Sessions should take steps to adopt this policy (with any future changes which may be made to the style policy to reflect changing guidance or best practice) as soon as may be practicable and in any event by the end of 2022.

In the name of the Committee

S GRANT BARCLAY, *Convener*
VICTORIA LINFORD, *Vice-Convener*
GEORGE J WHYTE, *Secretary*

Addendum

The Rev Dr George J Whyte

Church life at all levels had good reason to be glad that, when restrictions on meeting for worship, fellowship and decision-making such as had never before been experienced were imposed due to the Covid-19 pandemic, Rev Dr George Whyte was Principal Clerk.

George brought the knowledge and experience gained through a lifetime of service and willingly placed it at the service of the Kirk. He brought insights from parish ministry, having served in rural and city charges in Argyll, Glasgow and Edinburgh. He was well-versed in regional church life having served for nearly a decade as Clerk of Edinburgh Presbytery, and he was familiar with national responsibilities having served as Convener of the Board of Ministry, as Acting Principal Clerk and as Depute Clerk.

In the press release issued on his appointment, George made reference to the 'challenges of our day.' The extent of these could hardly have been anticipated in 2017. George's swift, assured and knowledgeable response through this period has enabled the Church to continue to function securely and effectively in worship, service and mission.

Bringing not only a sharp mind but an equally acute sense of humour and realism to his work, George has led the Church through a dizzying array of state legislative changes as he has engaged with government at all levels. He oversaw the calling, and holding, of the first online General Assemblies in the Kirk's history. In his earlier years as Principal Clerk, George supported the development of substantial pieces of Church law including a significant Act on discipline; in recent years he has been closely involved with provisions around same sex marriage, the Presbytery Mission Plan Act and a wholesale revision of Church Courts legislation. He has also facilitated and encouraged the Presbytery Reform process.

Moderators, Presbytery Clerks, ministers and elders, have been guided, supported – and persuaded – through George's direct, clear-sighted advice. As Secretary to the Legal Questions Committee, the depth of knowledge of Church law and practice which George has brought to the Committee's discussions has been invaluable. He has enabled the Church of Scotland to add to the richness of public life in demanding days. His own contribution to public life was further enhanced when in 2019 he was appointed as a Chaplain-in-Ordinary to Her Majesty the Queen.

The Church in expressing its gratitude to George for his expert and willing support of its law and practices over these years of office wishes him, and Moira, joy and enrichment in this next phase of their lives.

S GRANT BARCLAY, *Convener*
VICTORIA LINFORD, *Vice-Convener*

Appendix A

Amendment to Standing Orders – redraft of SO 122

122. Appointment.

(i) Conveners and Vice-Conveners of Councils and Committees shall be appointed by the Assembly.

(ii) Conveners **of Standing Committees other than the legal bodies** shall hold office for not more than four consecutive years (in the case of the Nomination Committee, Faith Nurture Forum and Faith Impact Forum, three consecutive years) and Vice-Conveners **of Standing Committees other than the legal bodies** shall hold office for not more than three consecutive years, unless the Assembly are satisfied that there are exceptional circumstances which make the reappointment of Conveners and Vice-Conveners desirable. The period of reappointment shall be for one year only. If at the time of their appointment they are already members of the Council or Committee another Member shall be appointed in their **stead** for the remainder of the period of their original appointment.

(iii) Conveners of the legal bodies (meaning the Appeals Committee of the Commission of Assembly, the Discipline Tribunal, the Judicial Commission, the Judicial Panel, the Ministries Appeal Panel, the Mission Plan Review Group, the Personnel Appeal Group and the Safeguarding Appeal Group) shall initially be appointed for a term of four years and shall be eligible for reappointment for further terms of four years. Vice-Conveners of the legal bodies shall initially be appointed for a term of three years and shall be eligible for reappointment for further terms of three years.

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

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.

1.2 This Church 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.

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 supervision and leadership over the congregation's participation in Mission within the parish and the congregation's sharing in the wider work of the Church. To that end the Kirk Session shall attend to these facets of church life ensuring that they are held in balance and expressed in ways appropriate to the context:

Worship**Service****Fellowship****Discipleship****Evangelism^[1]****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 the ministry of Jesus Christ so that its life exhibits the Five Marks of Mission.
- (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 for purposes of parish adjustment.
- (3) **Pastoral and spiritual care:** Exercise supervision over the pastoral and spiritual care of the whole congregation, 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.^[2] 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:** Arrange for adding to its number and receive 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, all 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^[3].
- (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, 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.^[4]
- (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 annual congregational accounts.
- (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:** 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).
- (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.

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 or of a pastoral or commercially sensitive nature.

5.1 Calling Meetings

5.1.1 The Moderator is responsible for calling meetings of the Kirk Session. 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, or by electronic means, or by telephone call, or by a combination of these methods.

5.1.2 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.

5.1.3 In each year, in addition to such meetings as may be arranged for the regular conduct of business, the Session must meet for the following purposes:

- (a) To review and approve the Communion Roll and Supplementary Roll,
- (b) To approve the accounts of the congregation for the preceding financial year,
- (c) To review and approve the Safeguarding Register, and
- (d) To 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 to all present promptly 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 (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) but shall require permission of the Kirk Session to speak on a particular item (or items) of business. 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.

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; they shall be charity trustees from the date of their appointment until they are discharged.

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. 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 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 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 need not be members of the congregation. Correspondents shall have the following rights in respect of meetings: to receive papers, to attend and to speak but not to vote. 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^[5].

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^[6].
- 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 supervision 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 sees 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^[7].
- (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 [one is under development].
- (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) 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.
- (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 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^[8]
- (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.

Civil Law

- (25) ensure that the Presbytery is registered as a Charity and follows civil charity law and good practice, including the timeous submission of Presbytery accounts to OSCR.
- (26) attest congregational annual accounts prior to their submission to OSCR.
- (27) cooperate with the Assembly Trustees on matters of charity governance.
- (28) adopt and operate a suitable policy to recognise and manage conflicts of interest effectively and demonstrably.
- (29) 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 completion of the Safeguarding Audit Checklist.
- (30) 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.
- (31) fulfil the provisions of civil law on data protection, in accordance with advice and assistance provided by the national Church offices and Church website.
- (32) 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.

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 of a pastoral 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 an Ordinary Meeting. The Presbytery may call one or more such meetings at a time.

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 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 to all present promptly 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 (including apologies) 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.

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.

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

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) 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 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 30th 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 XX 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^[9]
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^[10] 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, Elders and Deacons 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 in terms of section X 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 fidelit^[1]. 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 next provision's terms are dependent on whether or not the General Assembly of 2022 approves the Church Courts Overture: if approved: 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 X 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 X 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 X above to any other former Moderators eligible to be commissioned. Alternative provision if the Overture is not approved would be: Each Presbytery is authorised to elect as commissioners to the General Assembly former Moderators of the General Assembly who are members of that Presbytery or of a Kirk Session within the bounds. Such Commissioners shall be in addition to the quota of commissioners to which the Presbytery is entitled, and an equalising Elder or Minister shall be elected in respect of any such commissioner as appropriate to maintain overall equality of numbers of Ministers and Elders.]*

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.^[12]
- (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 and a “bribery and procurement” policy, both in terms of those recommended by the Law Dept.

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 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.

26.4 The Presbytery of International Charges shall be bound by the terms of this Act, subject always to the terms of Schedule 5 to the International Presbytery Act (Act II 2016).

26.5 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

- [1] These are expanded on in Guidance.
- [2] The text concerns the faithful administration of the office: "I swear that I will be faithful to the duties of.....", naming the office concerned.
- [3] 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).
- [4] Guidance will highlight particular Acts and Regulations of Assembly of which a Session Clerk should be aware.
- [5] Although such a person would retain the status of Elder.
- [6] ie there should be separately minuted decisions and two or more Kirk Sessions may not make joint decisions.
- [7] The expectation is that those who have their own Minister receive pastoral care from them.
- [8] The text concerns the faithful administration of the office: "I swear that I will be faithful to the duties of.....", naming the office concerned.
- [9] 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).
- [10] These include in practice bodies of different names and functions, such as Forums, Councils, Committees, Panels, Commissions and Trusts.
- [11] The text concerns the faithful administration of the office: "I swear that I will be faithful to the duties of.....", naming the office concerned.
- [12] Such a person may in daily practice be described as a ruling elder.

Appendix C

THE PRESBYTERY REVIEW PROCESS

BROAD PRINCIPLE

"The General Assembly exercises powers of oversight of Presbyteries and these may be exercised generally, or as specified in legislation." (*from the draft Church Courts Act*)

As part of this oversight there should be a process of Presbytery Review.

THE AIMS OF PRESBYTERY REVIEW

For the Presbytery being reviewed the aims are to:-

- encourage and enable a review of the Presbytery's life and work in terms of the Functions and Responsibilities set out in the Church Courts Act (2023).
- assist the Presbytery in planning how in future it will continue to support and oversee the local church as well as participating in the life of the Church at General Assembly level.

For the General Assembly and the wider Church the aims are to:-

- hear of good practice by Presbyteries and to share such across the Church of Scotland.
- coordinate central resourcing with the needs of the Presbyteries and their constituent congregations and initiatives.
- enable action to be taken when in the life of a Presbytery there is conflict or issues of non-compliance.

THE CONDUCT OF PRESBYTERY REVIEW

The responsibility for the practical conduct of the Presbytery Review Process would lie with the Presbytery Review Committee of the General Assembly ("the PRC") appointed in terms of Standing Orders.

Presbytery Reviews would normally be conducted every five years according to a schedule agreed by the General Assembly but a Review may be delayed or brought forward as the PRC sees fit.

This would be a peer-resourced review process where the Presbytery is provided with the material and guidance which would allow it to review all that it does in fulfilling those Functions and Responsibilities set out in the Church Courts Act.

The PRC would appoint three persons to act on its behalf when a Presbytery is embarking on their review. These should be persons with considerable experience of Presbytery life.

The role of this group would be to ensure that:-

- the Review is thorough and forward looking.
- key points of the Review Report are shared with the General Assembly.
- good practice is highlighted and shared across the Church of Scotland.
- problems are faced and tackled with appropriate support and input.

The normal Review Report to be compiled by the Presbytery with the support of the PRC would cover:-

- The activities of Presbytery at the time of the Review, giving an indication of priorities, why these were chosen, methodologies followed and an indication of why these were followed.
- The identification of good practice and areas of work in need of development.
- Future plans for altering the patterns of Presbytery life and why these changes are envisaged.
- The Presbytery's compliance with church and civil law.

The Review Report would be accompanied by a statement from the members of the Presbytery Review Committee who had supported the Review process. This statement would detail their engagement with the Presbytery and their approval or otherwise of the final Report.

The Report and accompanying statement would then be submitted for publication in the General Assembly's Volume of Reports.

A Presbytery Review Committee would consist of:

- a Convener, appointed through the Nomination Process
- one member appointed by each Scottish Presbytery and
- *ex officio* the Principal Clerk (as Secretary) and the Depute Clerk.

Appendix D

[] ACT AMENDING THE PRESBYTERY MISSION PLAN ACT (ACT VIII 2021)

Edinburgh, [] May 2022, Session []

The General Assembly hereby enact and ordain that the Presbytery Mission Plan Act (Act VIII 2021) shall be amended as follows:

1. *In the Schedule, section A, paragraph 1 (Composition), in the second paragraph, delete "drawn" and substitute "selected by the Clerks of Assembly" and add a final sentence at the end of section A: "The Clerks of Assembly shall act as Clerks to Mission Plan Review Panels". Also add a final sentence at the end of the first paragraph: "The members of the Panel shall initially be appointed for a term of four years, and shall be eligible for reappointment for further terms of four years."*

Appendix E

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

Edinburgh, [] May 2022, Session []

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

1. *Delete the existing definition of "Court" and substitute: ""Court" means a Presbytery or the Discipline Tribunal."*
2. *Amend section 2(4) to read "The right of appeal conferred in section 2(1) does not apply where the Acts and Regulations, or a decision, of the General Assembly specifically provide another appeal procedure and in particular this Act does not apply to appeals delegated to the Ministries Appeal Panel in accordance with Act VI 2007, to the Mission Plan Review Group in terms of Act VIII 2021, to the Safeguarding Appeal Panel in terms of Act XVI 2018 or to the Personnel Appeal Group in terms of decisions of the General Assembly."*
3. *Amend section 4(2)(i) to read "all appeals in terms of section 2(1), apart from those delegated to the Judicial Commission in accordance with section 4(3) below;"*
4. *Delete sections 4(2)(ii) and 4(2)(iv).*
5. *Amend section 4(2)(iii) by deleting "or to the Ministries Appeal Panel in accordance with Act VI 2007"*
6. *Amend section 4(3)(i) to read "Appeals under the Discipline Act (Act I 2019), being appeals against the decisions of Discipline Tribunals in discipline cases, except in matters of doctrine;"*
7. *Delete the sentence at the end of section 4(3) beginning "For the avoidance of doubt..."*
8. *Delete the existing section 10 (Quorum) and substitute:*

"With the exception of decisions that one or more Grounds of Appeal is incompetent or irrelevant, which decisions may be taken by the Convener and Vice Convener as provided for in Rule 5.8 of Schedule 2, the quorum of the Appeals Committee of the Commission of Assembly shall be eleven persons."

9. *In section 14(2) delete "ministers, elders and deacons" and substitute "ministers, elders, deacons and Church members".*
10. *Delete the existing section 17 (Quorum) and substitute:*
"With the exception of decisions that one or more Grounds of Appeal is incompetent or irrelevant, which decisions may be taken by the Convener and Vice Convener as provided for in Rule 5.8 of Schedule 2, the quorum of the Judicial Commission shall be three persons."
11. *In Schedule 2 (Rules of Procedure),*
 - (i) *In Rule 2.1, delete "or the Secretary of the Presbyterian Commission, as the case may be".*
 - (ii) *Delete the existing Rule 3 and substitute:*

"3. Lodging of Answers by Respondent

3.1 Within four weeks of being requested to do so by the Principal Clerk, the Respondent shall lodge Answers to the Grounds of Appeal with the Principal Clerk, and intimate a copy of those Answers to (i) the Clerk of the Court against whose decision the appeal is being taken, and (ii) the Appellant in the Appeal.

3.2 The Answers shall consist of brief responses to the Appellant's numbered Grounds of Appeal. The basis of any challenge to the competency or relevancy of any of the Grounds of Appeal shall be explained in the Answers.

3.3 If the Respondent does not lodge Answers, the appeal shall not be dismissed but shall continue to an Appeal Management Hearing."

- (iii) *In Rule 4.1, delete "or the Secretary of the Presbyterian Commission, as the case may be" and after "decision" add "the appeal".*
- (iv) *Delete the existing Rule 5 and substitute the following:*

"5. Appeal Management Hearings

5.1 In any appeal, once the Appellant's Grounds of Appeal have been lodged and the Respondent has been given an opportunity to lodge Answers, and save where the Convener and the Vice-Convener with the agreement of the Parties decide to dispense with an Appeal Management Hearing, the Principal Clerk shall fix a date for a first Appeal Management Hearing.

5.2 The date of the first Appeal Management Hearing shall be at least 28 days after the date upon which the Respondent's Answers are lodged (or, where none are lodged, at least 14 days after the date by which the Respondent was requested to lodge Answers). The Principal Clerk shall intimate the date of the first Appeal Management Hearing to both Parties, giving at least 14 days' prior written notice of the date.

5.3 More than one Appeal Management Hearing may be held, as determined by the Convener and Vice-Convener.

5.4 The purpose of the Appeal Management Hearing(s) shall be to determine whether the Parties are ready to proceed to a hearing of the appeal, and to consider other legal, procedural and practical matters in respect of the appeal.

5.5 The Appeal Management Hearing(s) shall be conducted by the Convener and the Vice-Convener of the Commission which is to hear the appeal. The Clerks of Assembly shall act as clerks to the Appeal Management Hearing(s).

5.6 The following matters shall be considered at Appeal Management Hearing(s):-

- a) any issue(s) of competency and/or relevancy of the Grounds of Appeal;
- b) the Parties' state of preparation for the Appeal Hearing;
- c) setting of a date and duration for the Appeal Hearing;
- d) productions required, with the presumption that the productions at the Appeal Hearing shall be those which were before the Court against whose decision the appeal is being taken, unless a Party is allowed to lodge additional material on cause shown;
- e) whether the Parties may agree certain productions and evidence, and whether a Joint Minute agreeing any facts may be lodged;
- f) whether the timetable for the lodging of the Written Arguments (as defined below) is apt, or requires to be varied in any way, for example to provide that Parties will exchange drafts of their Written Arguments by a certain date;
- g) whether or not the Appeal Hearing should be held in private;
- h) whether or not a factual investigation of any points is necessary or appropriate, in which case a committee or reporter may be appointed by the Principal Clerk for this purpose;
- i) whether there should be evidence led at the Appeal Hearing, the presumption being that this will not occur;
- j) whether the Procurator should attend the Appeal Hearing;
- k) whether any Party has any objection to any person in the pool for the Commission sitting when the appeal is being heard, which objection may only be made on cause shown and, if sustained, shall disqualify the person or persons objected to from sitting in that appeal; and
- l) any other matter concerning the Appeal Hearing, the decision of the Convener and the Vice-Convener as to what should be considered being final.

5.7 The Parties or their representatives shall wherever possible attend an Appeal Management Hearing in person, provided that if the Convener and the Vice-Convener so agree, an Appeal Management Hearing may take place by video conference or other appropriate medium.

5.8 At any Appeal Management Hearing the Convener and the Vice-Convener may determine that one or more Grounds of Appeal is/are irrelevant and/or incompetent and, where no competent and relevant Grounds of Appeal have been identified, may dismiss the appeal on that basis. The Convener and Vice-Convener shall also have power at an Appeal Management Hearing to make any order or determination relating to the appeal which is just and reasonable. All orders or determinations made under this Rule 5.8 shall be final."

Appendix F

[] ACT AMENDING THE INTIMATION OF APPEALS ACT (ACT V 2004) (AS AMENDED)

Edinburgh, [] May 2022, Session []

The General Assembly hereby enact and ordain that the Intimation of Appeals Act (Act V 2004), as amended, shall be further amended as follows:

1. *In section 1:*
 - (a) *in the second line, delete the word "court" and substitute "Kirk Session or Financial Board";*
 - (b) *in the third line delete "seven" and substitute "fourteen"; and*
 - (c) *add at the end "and the Presbytery Clerk".*
2. *In section 6 delete the existing wording and substitute:*
"Financial Board" means the body responsible for managing the finances of a congregation, including a Congregational Board, Deacons' Court, Committee of Management or Kirk Session."

Appendix G

[] ACT AMENDING THE COMMISSION OF ASSEMBLY ACT (ACT VI 1997)

Edinburgh, [] May 2022, Session []

The General Assembly hereby enact and ordain that the Commission of Assembly Act (Act VI 1997), as amended, shall be further amended as follows:

1. *Amend section 4 by numbering the existing wording sub-section (1) and adding the following:*
 - (2) Meetings of the Commission may be held in-person, online or in hybrid form, i.e. with some members present in-person and others simultaneously present online. Each of in-person, online or in hybrid form is hereinafter referred to as a "format". The Legal Questions Committee shall in calling a meeting of the Commission decide in which format the Commission shall meet.
2. *Amend section 5(1) by adding a new sub-paragraph (h) as follows:*
 - (h) having received the Report of the Assembly Business Committee, to decide on the date, meeting place and format of the next General Assembly, in circumstances where it subsequently becomes apparent that the date, meeting place and/or format specified by one Assembly for the next Assembly should be reconsidered.
3. *In section 9, before "to legislate", add ", save as specified in section 5(1)(h),".*
4. *Amend section 11 by adding at the start: "Subject to section 5(1)(h),".*

Appendix H

[] ACT AMENDING THE DISCIPLINE ACT (ACT I 2019) (AS AMENDED)

Edinburgh, [] May 2022, Session []

The General Assembly hereby enact and ordain that the Discipline Act (Act I 2019), as amended, shall be further amended as follows:

1. *In section 23, at the end of the first sentence add ", in which case the Assessor shall continue to investigate the Disciplinary Complaint in terms of section 22(1)(c)".*