

**I. CONGREGATIONS IN UNSATISFACTORY STATE ACT (ACT I 1988) (AS AMENDED BY ACTS XI 1992, VII 1994, VI 1996, IV 2002, II 2003, X 2016 AND I 2019)**

*Edinburgh, 21st May 1988, Session 1.*

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

1. When, in the judgement of a Presbytery, after due enquiry in accordance with the provisions of this Act,
  - (a) a congregation is in an unsatisfactory state, and
  - (b) the unsatisfactory state will continue unless the pastoral tie between minister and congregation is dissolved.

it shall be competent for the Presbytery to dissolve the pastoral tie and declare the charge vacant.

2. A Presbytery may institute proceedings under this Act only after it is satisfied that:
  - (a) there exists a situation in a congregation which significantly and detrimentally affects the peace, well-being or life thereof;
  - (b) all reasonable steps of a pastoral nature have been taken to remedy the situation, and have failed; and
  - (c) the situation requires further action at the instance of the Presbytery.

3. Proceedings shall not be commenced under this Act, or if already commenced shall be sisted, if it is found that grounds exist for action under Act XV 2002 <sup>1</sup> anent Long-term Illness of Ministers in Charge.

<sup>1</sup> At the time when Act IV 2002 was passed, Act X 2000 was still in force; it was later replaced by Act XV 2002.

4. The decision of a Presbytery to institute proceedings under this Act shall be final, and shall be by resolution to appoint a Committee of Inquiry. The terms of such resolution shall include an explicit reference to this Act and shall be recorded in the Minutes of the Presbytery.

5. When a Presbytery has resolved to appoint a Committee of Inquiry it shall proceed immediately to make such appointment. The membership of the said Committee shall not include the Moderator or the Clerk of the Presbytery. It shall not normally include any person who has been involved in the previous steps in terms of sub-section 2(b) above. If the Presbytery should appoint any such person it shall record in the Minutes its reasons for so doing.

6. Notwithstanding the factors, in terms of section 2 above, which have led to the appointment of a Committee of Inquiry, the said Committee shall proceed de novo to make an impartial and thorough inquiry into the state of the congregation, by interviewing all parties who can show, or be shown to have, a legitimate interest, by examining relevant records of the congregation, letters, written submissions, and other documents, and by any other means which, in the opinion of the Committee, will help to establish the facts of the situation. To enable it to carry out its duties the Committee shall have

power to order the production of documents and things of any nature, and to cite the minister, all or any of the elders and other office-bearers and members of the congregation, and any other person who is amenable to the jurisdiction of the Courts of the Church to assist with their inquiries. The failure of any person, duly cited, to appear without reason being given to the Committee for non-appearance shall not prevent the Committee proceeding. If judged appropriate, the Committee may also call a meeting or meetings of the congregation.

7. If, at any time, it appears to the Committee of Inquiry that the situation of the congregation has been remedied, the said Committee shall confer with the Superintendence Committee or its equivalent. If the Committees together agree, they shall report to the Presbytery the fact that the situation of the congregation has been remedied. The joint Report of the Committees shall contain in addition such information as is reasonably required to enable the Presbytery to dispose of the matter. Upon consideration of the joint Report the Presbytery may:
  - (a) resolve to depart from the matter and discharge the Committee of Inquiry, or
  - (b) continue the matter for further inquiry and report after such period not exceeding one year as the Presbytery shall think fit,

and may, in any case, take such special steps for the pastoral oversight of the congregation as the Presbytery shall think appropriate.

8. Unless the Committee of Inquiry is discharged under section 7 above it shall, when it has completed its inquiry, prepare the FIRST PART of a Report which shall contain:
  - (a) a brief narrative of the way in which the inquiry has been carried out including, if circumstances warrant it, a note of any difficulties encountered in eliciting the facts of the situation;
  - (b) a list of persons interviewed;
  - (c) a list of records, letters, written submissions, and other documents examined;
  - (d) a note of any other sources of evidence; and
  - (e) a numbered list of the facts which the Committee considers to have been established by its inquiries.

9. When the FIRST PART of the Report has been completed, the Committee of Inquiry shall, on the basis of that PART, consider whether:
  - (a) the congregation is in an unsatisfactory state, and
  - (b) the unsatisfactory state will continue unless the pastoral tie between minister and congregation is dissolved.

and shall thereupon prepare the SECOND PART of its Report, stating its conclusions on (a) and (b) above, together with the reasons for such conclusions and, if it so determines, a recommendation as to action by the Presbytery. The Report shall state whether the conclusions and recommendations, if any, were reached unanimously, and should give voting figures for any decision which was not unanimous.

10. When the Report of the Committee, comprising the FIRST PART and the SECOND PART, has been prepared, it shall be lodged with the Clerk of the Presbytery who shall

forthwith dispatch by recorded delivery a copy thereof, together with a copy of this Act, to the minister, ordering him, or her, in the name of the Presbytery, to lodge a Response, if so advised, within twenty-eight days of such dispatch. If such a Response is submitted, it shall contain a statement, in articulate numbered paragraphs corresponding to the paragraphs of the Report of the Committee of Inquiry prepared in terms of section 8(e) above, in which the minister shall state whether he or she agrees or disagrees with each statement made by the Committee, and, in the case of disagreement, shall state the minister's contentions in response to those of the Committee. Such Response may, in addition, contain in concise form such other information and comment as the minister wishes to place before the Presbytery.

11. In the event of the minister failing to submit a Response within twenty-eight days in terms of section 10 above, the Clerk shall inform him or her in writing that if he or she does not either:

- (a) submit a Response within a further fourteen days, or
- (b) submit a written request for more time to prepare a Response, with the grounds therefor,

he or she shall be deemed to have concurred in the statements in the Report in terms of section 8(e) above. In the event of a written request for more time being submitted, the Clerk shall report this to the Presbytery no later than its next ordinary meeting, and the Presbytery shall determine a date by which a Response shall be submitted, which date shall be communicated to the minister with intimation that, as above, failure to submit a Response by that date will be deemed to be concurrence in the statements in the Report.

12. When a Response has been duly submitted, or when the prescribed periods in terms of sections 10 and 11 above have expired without a Response being submitted, the Clerk shall inform the Moderator who shall call a meeting of the Presbytery *pro re nata* to consider and adjudicate upon the issues raised in the Report and Response, if any; and a copy of the Report and the Response, if any, shall be sent to every member of the Presbytery along with the notice calling the meeting. At the same time the minister shall be cited to appear.

13. For the avoidance of doubt it is declared that the members of the Committee of Inquiry shall not be at the bar of the Presbytery at any stage in the proceedings, even if cited and called as witnesses; provided that the Convener, or other member appointed by the Committee, giving in the Report, and the minister, shall speak from the bar and shall be deemed to be parties at the bar throughout the subsequent proceedings.

14. At the meeting of the Presbytery *pro re nata* the procedure shall be as follows:

- (i) The Report of the Committee of Inquiry and the Response of the minister, if submitted, shall be tabled without discussion.
- (ii) If the Committee and the minister are in dispute in respect of any matter of fact, the Presbytery shall proceed to hear such relevant evidence, oral and documentary, as may be presented by the Committee and the minister respectively, and to adjudicate thereon as follows:

- (a) Evidence may be presented by the Convener or other member appointed by the Committee, and by the minister personally or by counsel or solicitor as each shall think fit, and shall be subject to cross-examination, and to questions by the Presbytery.
  - (b) When all evidence has been received, the Presbytery shall hear each party in turn on the issues of fact in dispute, after which parties shall be removed.
  - (c) When parties have been removed the Presbytery shall make findings on the issues of fact in dispute in the light of the evidence before it, and shall record such findings in the Minutes together with a statement of the facts not in dispute, and such findings and statement together shall comprise the Basis of Fact for further procedure.
- (iii) If the Committee and the minister are not in dispute in respect of any matter of fact the Presbytery shall adopt the Committee's statement as the facts in the matter, and shall minute the same as the Basis of Fact for further procedure.
  - (iv) For the purposes of the two preceding sub-sections there shall be a dispute in respect of a matter of fact if and only if the minister has submitted a Response and the dispute arises on the terms of the Report and Response.
  - (v) When the Basis of Fact has been duly minuted, and the parties informed of its terms, the Presbytery shall hear the submissions and argument of the parties. The Convener or other member appointed by the Committee, and the minister, may address the Presbytery personally or by counsel or solicitor as each shall think fit. Thereafter parties shall be removed, and motions shall be called for.
  - (vi) Motions shall in the first instance be directed to resolving the question as to whether or not the congregation is in an unsatisfactory state. In the event of a judgment that the congregation is not in an unsatisfactory state, the case will thereby be concluded.
  - (vii) Motions should thereafter be directed to reaching a final judgement based on the considered opinion of the Presbytery as to whether or not the unsatisfactory state will continue unless the pastoral tie is dissolved. Since an affirmative answer to that question is a precondition of a judgement to dissolve the pastoral tie, in terms of section 1 of this Act, any motion to dissolve the pastoral tie must include an explicit statement to the effect that it is the opinion of the Presbytery that the unsatisfactory state will continue unless the pastoral tie is dissolved; and also, if the Presbytery is of that opinion it shall be bound to proceed to dissolve the pastoral tie. Any other motion must include an explicit statement to the effect that the Presbytery is not of the opinion that the unsatisfactory state will continue unless the pastoral tie is dissolved, and it must also contain a resolution to effect some alternative remedy for the unsatisfactory state, or an alternative course of action.
  - (viii) For the avoidance of doubt it is declared that it shall be competent for the Presbytery to find the state of the congregation unsatisfactory and to dissolve the pastoral tie even if the Report of the Committee of Inquiry contains no conclusion or recommendation to such effect, provided that, in the opinion of the Presbytery, the Basis of Facts warrants a judgement to such effect.
  - (ix) The final judgement of the Presbytery shall be recorded in the Minutes, which shall be adjusted and approved by the Presbytery before the conclusion of the meeting.

15. In all proceedings under this Act procedure shall be in accordance with the Standing Orders of the Presbytery and with the normal practice of Courts of the Church, provided that where any of these are inconsistent with the provisions of this Act the provisions of this Act shall prevail, and in particular the following provisions shall apply:
  - (a) While no time limits shall be determined beforehand for any speeches, the Presbytery may resolve to require anyone already speaking to conclude within specified time if, in the opinion of the Presbytery, the ends of justice will best be served by such requirement, considering not only that the ends of justice require that parties be adequately heard but also that unduly long meetings, or meetings continued through several adjournments, are not conducive to the ends of justice.
  - (b) The Presbytery shall at the commencement of proceedings under this Act apply to the Legal Questions Committee for the appointment of an Assessor to advise the Presbytery on matters of procedure.
  - (c) The Presbytery shall make such contribution to the cost incurred by the minister in preparing sufficient copies of the Response for all members of the Presbytery, and in circulating the Response, as shall be agreed between the Presbytery and the minister, or, failing such agreement, as shall be fixed by the Legal Questions Committee.
16. When the Presbytery has reached a judgement dissolving the pastoral tie, it shall immediately suspend the minister from office as minister of the charge, but without prejudice to continued payment of stipend and occupancy of the manse, and it shall also immediately appoint an interim Moderator. Such suspension shall continue until the date appointed by the Presbytery for the dissolution of the pastoral tie, or until the case is settled on appeal.
17. Parties have a right to appeal or dissent-and-complain after the final judgement of the Presbytery. The procedure shall, except as herein provided, be as in section 46 of the Discipline Act (Act I 2019). In the event of no appeal or dissent-and-complaint being taken, the judgement of the Presbytery shall become effective on the date specified in terms of section 14(vii) above, and the Presbytery shall report this judgement to the Ministries Council, which Committee shall, in the event of the pastoral tie being dissolved, make provision for the minister as provided in section 18 of this Act.
18. When a minister's tenure has been terminated in terms of this Act he or she shall be entitled to receive, for the lesser of (i) a period of six months and (ii) until the minister begins another appointment:
  - (a) a maintenance allowance of equal to the amount of the prevailing stipend at point 1 of the scale at the date of payment; and
  - (b) the use and occupancy of a manse on the same terms as normally apply to a minister in a charge, or, in the event of no manse being available or of his or her choosing to live in his or her own house, an allowance appropriate to individual needs to be determined in consultation between the minister and the Ministries Council.

At the end of the six month period, if the minister is still unplaced, the whole situation shall be reviewed by the Presbytery in consultation with him or her and with the Ministries Council.

19. A judgment dissolving the pastoral tie shall be reported immediately to the Ministries Council, who shall arrange for a minister from another Presbytery to give pastoral advice, and counsel to the minister, whether or not appeal or dissent and complaint has been taken.
20. (a) All procedure in Presbytery under this Act shall be taken in private, and shall be the subject of a Record Apart, only judgements as above prescribed being recorded in the Minutes.  
(b) In the event of an appeal or dissent-and-complaint the Presbytery Clerk shall furnish copies of the Record Apart to the parties and to the Principal Clerk.
21. Act XXI 1960, is hereby repealed.