

LEGAL QUESTIONS COMMITTEE MAY 2024

Proposed Deliverance

The General Assembly:

1. Receive the Report.
2. Approve a new Standing Order 35A on Probationers and Familiarisation Candidates as detailed in Appendix B of the Report of the Assembly Business Committee (*Section 3 – Amendments to Standing Orders*).
3. In relation to Presbytery Review (*Section 4 – Presbytery Review*):
 - a. Instruct that the Presbytery Review Committee (“PRC”) be established as a Standing Committee of the General Assembly, comprising a Convener, Vice-Convener and eleven members nominated by the Nomination Committee and appointed by the General Assembly, together with *ex officio* the Principal Clerk and the Depute Clerk; and otherwise in terms of section 1b) of the draft Presbytery Review Act attached to this Report and set out in Appendix A (“the draft Act”);
 - b. Instruct the PRC to carry out in 2024-2025, as pilots, Reviews in the Presbyteries of (1) Edinburgh and West Lothian and (2) Perth, working in accordance with the principles and processes set out in the draft Act, with Summary Reports as referred to in the draft Act being submitted to the General Assembly of 2025;
 - c. Instruct Presbyteries to send comments on the draft Act to the Principal Clerk by 31 December 2024, and instruct the Committee to bring a Presbytery Review Act in final form to the General Assembly of 2025; and
 - d. Instruct the PRC to submit a Report on inspection of Presbytery Records in accordance with the draft Act to the General Assembly of 2025.
4. Pass an Act amending the Discipline Act (Act I 2019), as amended, as set out in Appendix B to this Report (*Section 5.2 – Review of the Complaints Process and Proposed Amendments to the Discipline Act (Act I 2019) and Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018)*).
5. Pass Regulations amending the Legal Aid in Disciplinary Proceedings Regulations as set out in Appendix C to this Report (*Section 5.3 – Review of the Complaints Process and Proposed Amendments to the Discipline Act (Act I 2019) and Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018)*).
6. Instruct the Committee to develop a process for dealing with complaints made against a Presbytery committee and a bespoke process for a complaint against a Presbytery Clerk and to report to the General Assembly of 2025 (*Section 5.4 – Review of the Complaints Process and Proposed Amendments to the Discipline Act (Act I 2019) and Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018)*).
7. Repeal the Presbytery Membership Act (Act I 2006) (*Section 10 – Repeal of Superseded Act*).

Report

1. THE COMMITTEE’S REMIT

1.1 This is to: -

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

1.2 Members of the Committee examined the minutes of Assembly Standing Committees for the year 2023 on Thursday 22nd February 2024. In general, these were found to be acceptable and any shortcomings were drawn to the attention of the Committee concerned.

1.3 The Committee has prepared some guidance about how minutes should be prepared and this is found immediately below in section 2 of this Report. In particular, with an increasing number of Committees keeping minutes in electronic form, it is important that guidance is followed to ensure that a proper archive of records may be maintained.

1.4 The Committee in its remit is also tasked with the annual inspection of Presbytery Records, but with the disruption caused by the Covid-19 pandemic and thereafter due to resourcing issues, has not yet initiated this work. It is now proposed that the work be taken on by the new Presbytery Review Committee - see section 4 below.

2. GUIDANCE ON PREPARATION OF MINUTES OF GENERAL ASSEMBLY STANDING COMMITTEES

2.1 In accordance with the arrangements set in place by the General Assembly (GA) of 2000, the Committee is asked to examine Minutes of the Standing Committees of the General Assembly on an annual basis. In order to assist Secretaries/Clerks of Standing Committees, the Committee has provided some guidance as to what its inspectors will be looking for at its annual inspections, as follows:

- 1) that the Record is paginated - please use sequential page numbering*;
- 2) the inspectors will be noting the pages from and to which the Record has been examined, and the date of the Minute of the last meeting of the Committee;
- 3) that places and dates of meetings are duly entered;
- 4) details of whether the Committee met in person, online or in hybrid format (optional but desirable);
- 5) that headings and/or marginal references are sufficiently clear and explicit;
- 6) that the Sederunt is duly entered;
- 7) that it is recorded that meetings are open and closed with prayer;
- 8) that the Minutes are signed by the Convener and Clerk (individual pages need not be initialled but Committees are welcome to continue this practice if they so wish);
- 9) whether the business of the Committee appears to be orderly conducted; and
- 10) it is noted that the inspectors may make any other observations which may occur to them as important to be submitted to the Assembly.

*By sequential page numbering is meant a system whereby the page numbering of the minutes is continued from one minute to the next (a) across a calendar year, (b) across a Church year (June to May), (c) across the Committee's minutes intended to form one bound volume, or (d) even from that Committee's inception. The purpose of this is to ensure that there are no unauthorised additions to or omissions from the final archived record.

For electronically submitted Minutes, Secretaries/Clerks are requested to:

- file and submit these as pdfs (or one composite pdf for the calendar year);
- for individual files, save these with a name commencing YYYY-MM-DD to facilitate the reading of the Minutes in sequential order; and
- add the graphic signatures of the Convener and Clerk to the pdf record of each meeting.

3. AMENDMENTS TO STANDING ORDERS

3.1 The Assembly Business Committee received the following remits at the General Assembly of 2023:

- *Instruct the Assembly Business Committee in consultation with the Legal Questions Committee and the Faith Action Programme Leadership Team to consider the issue of representation within the General Assembly, of Candidates in Training and Probationers, including the possibility of voting rights and to report to the General Assembly of 2024.*
- *Instruct the Assembly Business Committee in consultation with Legal Questions Committee and the Faith Action Programme Leadership Team to consider the issue of youth representation within the General Assembly, including the possibility of voting rights and to report to the General Assembly of 2024.*

3.2. The Committee provided a paper to the Assembly Business Committee. A report on this matter is contained within the Report of the Assembly Business Committee and as required by Standing Order 128, the accompanying section of deliverance is set out at item 2 of this Committee's Proposed Deliverance above.

4. PRESBYTERY REVIEW

4.1 The idea of a process of Presbytery Review, first raised at the General Assembly of 2016, was initially developed during 2017 and 2018 as a peer-review process in which a number of Presbyteries took part. Although the General Assembly of 2019 instructed the Committee to prepare legislation, the decision by the same Assembly to reduce the number of Presbyteries (together with the Covid-19 pandemic) meant that this work was paused until 2022. Principles of Presbytery Review were then brought to and approved by the General Assembly of 2023 which instructed the Committee to bring a Presbytery Review Act to the Assembly of 2024.

4.2 The aims of Presbytery Review are as follows:

- to encourage and enable a Presbytery to reflect on its life and work;
- to assess whether a Presbytery is satisfactorily fulfilling its Functions and Responsibilities;
- to enable action to be taken when in the life of a Presbytery there is conflict or when there are issues of non-compliance with the Functions and Responsibilities;
- to give the opportunity for the leadership and the wider membership of the Presbytery as a whole to challenge one another as to the effectiveness or otherwise of the Presbytery's structures and the functioning of them;
- to hear of and celebrate good practice by Presbyteries and share such with the wider Church; and
- to assist with the co-ordination of the central resourcing of the wider Church.

The "Functions and Responsibilities" are those referred to in the Church Courts Act (Act VI 2023).

4.3 During the course of the past year, concerns were raised about governance structures and their operation in one of the newly formed Presbyteries and in June 2023 the Committee appointed a sub-group to undertake an urgent Governance Review. This Governance Sub-Group presented its report to the Committee in November and immediately thereafter presented recommendations to the Presbytery itself, which appointed a Working Group to develop these for implementation by the Presbytery. At the time of writing this work is still underway but it promises to ensure more robust governance in the Presbytery concerned going forward. The experience of dealing with that Review has greatly informed the proposals for the Presbytery Review Act which are now presented.

4.4 The draft Act annexed in Appendix A has been prepared in light of the Governance Review and taking account of civil law requirements, meaning that the peer-review process previously trialled has been replaced by a process more akin to that in the Local Church Review Act (Act I 2011). Presbytery Review would be overseen by a new Standing Committee of the General Assembly, the Presbytery Review Committee. Each year, on a flexible five-year cycle, two or three Presbyteries would be reviewed each by a Review Group of three people drawn from and reporting back to the Committee, which would then ensure that a Summary Report is presented to the General Assembly. Guidance for the conduct of Presbytery Review will be prepared by the Legal Questions Committee in the first instance and this will be developed by the Presbytery Review Committee in the light of experience.

4.5 The Committee has taken the view that it would be best to present a draft Act this year and allow further time for final consultation with Presbyteries over the coming year. A draft Presbytery Review Act is presented in Appendix A, with the proposal that it be 'road tested' in the Presbytery of Edinburgh and West Lothian and in the Presbytery of Perth during 2024-2025. A final Act will be brought to the Assembly of 2025 for approval.

5. REVIEW OF THE COMPLAINTS PROCESS AND PROPOSED AMENDMENTS TO THE DISCIPLINE ACT (ACT I 2019) AND LEGAL AID IN DISCIPLINARY PROCEEDINGS REGULATIONS (REGS I 2018)

5.1 A sub-group has been formed and in accordance with the remit from the General Assembly of 2023, is undertaking a review for the Assembly of 2025, of the Complaints process, as that is set out on the Church's website. The Committee has since determined that the review should include aspects of the Discipline Act. Meantime, some minor amendments to both the Discipline Act and the Legal Aid Regulations have been identified, and the Committee thought it would be helpful to bring these to this year's Assembly.

5.2 In relation to the Discipline Act (Act I 2019), these appear as a proposed amending Act in Appendix B and they are:

- Addressing the situation where a Discipline matter follows on from a civil law court case, to enable the civil court's decision to be admissible in evidence in the Church court and to be held to have established any issue in respect of which the decision is relevant, subject to the possibility of proof to the contrary.
- Allowing a Respondent six weeks rather than four weeks to accept an offer of a Censure with consent, given that legal advice must first be obtained.
- Tidying up the Act's provisions about who receives documentation recording censures.
- Aligning the Act better with the provisions of the Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018).

5.3 In relation to the Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018) these appear as proposed amending Regulations in Appendix C and they are:

- Removing obsolete wording around previous Disciplinary legislation.
- Making clear that legal aid may be available where a Respondent chooses the Accelerated Procedure under the Act.
- Clarifying that whether the Respondent is obliged to take legal advice before agreeing to a Censure with Consent or to a Joint Minute under the Accelerated Procedure is a relevant consideration for the Legal Aid Sub-Committee.

5.4 During discussions on the draft Presbytery Review Act, the Committee considered the fact that there is currently no formal process by which complaints might be made against a Presbytery committee nor a bespoke process for a complaint against a Presbytery Clerk. The sub-group took the view that good governance requires such procedures to be put in place, albeit that they may be used only infrequently. The sub-group was also conscious of the need to bear in mind the employed status of Clerks and thus of the need for a fair process which does not duplicate or conflict with the terms of their employment contracts. The sub-group will, therefore, give further consideration to how such procedures might operate and whether there may be some cross-over with the provisions of the Act and will report back to the General Assembly of 2025.

6. COMMISSION OF ASSEMBLY HELD ON 30 NOVEMBER 2023 AS TO HYBRID CONGREGATIONAL MEETINGS

6.1 Following a Petition to the Assembly of 2023 from the Kirk Session of St Andrew's, Bo'ness, the Committee was instructed, *"to consider bringing forward proposals to a Commission of Assembly, to be held in any format permitted under section 4(2) of the Commission of Assembly Act (Act VI 1997) before 30 November 2023, to enable congregational meetings convened for any purpose to be held, in addition to wholly in person, online or by a combination of in-person and online (ie in hybrid format) with voting and thus decision-making similarly taking place simultaneously in person and/or online, such proposals to be contained in a new Protocol to be passed for that purpose."*

6.2 An online Commission of Assembly was held on 30 November 2023 and the Minute of that Commission is included in the Volume of Reports prepared for this Assembly. Approval was given to a Protocol authorising the holding of congregational meetings in hybrid format, i.e. with persons permitted to be present in person or online, from 1 December 2023. It is for a Kirk Session to decide whether to proceed with a hybrid meeting. The Protocol does not

permit wholly online congregational meetings, nor postal votes, and relevant explanations are given in paragraph 2.3 of the Committee's Report for the Commission, annexed to the Minute.

7. TERMS OF RESPONSIBILITY FOR MINISTERS

7.1 The Committee has worked on preparing draft Terms of Responsibility for Ministers in the Church of Scotland, which have been passed to the Assembly Trustees and Faith Action Programme Leadership Team to take forward.

8. REQUESTS FOR REVIEW AND FOR ASSISTANCE UNDER THE PRESBYTERY MISSION PLAN ACT (ACT VIII 2021)

8.1 The Office of the General Assembly continues to process requests for review received from Kirk Sessions, in relation to Presbytery Mission Plan decisions. The Act provides for a review of the process used by the Presbytery in preparing and approving a Mission Plan, not an appeal of the decision made, and thus it does not substitute a different decision; rather it looks at how the decision was taken. A decision to uphold a request for review means that the Presbytery then reruns the process of taking the decision on the relevant part of the Mission Plan. The decision from the rerun of process could be the same as per the existing Plan or it could be different.

8.2 The grounds upon which a review may be requested relate to errors in Church law, material irregularities of process, or the taking into account of an irrelevant material fact or failure to take into account a relevant material fact. Before a review can proceed, the Act provides for the Committee on Overtures and Cases (consisting of the Procurator, the Solicitor and the Assembly Clerks) to give leave to proceed.

8.3 At the time of writing, there have been 38 requests for review across 18 Presbyteries in relation to initial approval of Mission Plans, with two requests in addition from Presbyteries for assistance under section 2.2.4 of the Act. Most of these requests have been processed, with only a small number currently pending decision.

8.4 The Mission Plan Review Group is fully appointed with 15 members, and all have worked on several cases. The work is difficult, sensitive and time-consuming and the Committee is grateful to all those on the Group for their diligence in service.

8.5 Not all Mission Plans are yet approved. Also, in due course, a new round of requests for review will arise, related to annual evaluation and development of Presbytery Mission Plans.

9. SUB-GROUP ON NATIONAL AND CONSTITUTIONAL ISSUES

9.1 A sub-group of the Committee has been set up to consider and monitor national and constitutional issues in the life of the Church, such as the Oath of Accession, in light of events following the death of Her late Majesty the Queen. The sub-group comprises the Principal Clerk; the Solicitor; the Minister of St Giles'; the Dean of the Chapel Royal; the Procurator and the Committee's Convener, all appointed in an *ex officio* capacity. The sub-group will undertake this work in consultation with other agencies, as deemed necessary from time to time.

10. REPEAL OF SUPERSEDED ACT

10.1 The opportunity is taken to repeal the Presbytery Membership Act (Act I 2006) which was superseded by the Church Courts Act (Act VI 2023).

In the name of the Committee

MARJORY MACLEAN, *Convener*
ALAN REID, *Vice-Convener*
FIONA SMITH, *Secretary*

Addendum

Rev Alan Reid brought to his year as Vice Convener the experience and wisdom of a former Presbytery Clerk, but also the grace and imagination everyone associates with his wider ministry. No task has been too great or too small for him; he has been equally willing both to represent the Convener in small technical tasks and to lead a Working Group examining the most delicate and sensitive of questions. Alan always ensures the pastoral character of what might otherwise remain simply as dry impersonal rules. The Committee is grateful to him for his counsel and commitment, and wishes him well as he takes up new responsibilities in his Presbytery.

MARJORY MACLEAN, *Convener*
FIONA SMITH, *Secretary*

Appendix A**Draft Presbytery Review Act****PRESBYTERY REVIEW ACT***Edinburgh, [] May 2025, Session []*

In requiring Presbytery Review, the General Assembly seeks (1) to further the mission of the Church of Scotland by ensuring the good governance and oversight of congregations within the bounds of each Presbytery and by facilitating the sharing of good practice throughout the Church and (2) to fulfil the terms of the Church Courts Act (section 22.2), which states that the General Assembly shall exercise powers of oversight of Presbyteries and these may be exercised generally, or as specified in legislation.

Accordingly, the General Assembly hereby enact and ordain:

1. DEFINITIONS

- a. the "Aims" shall mean:
 - (i) to encourage and enable a Presbytery to reflect on its life and work;
 - (ii) to assess whether a Presbytery is satisfactorily fulfilling its Functions and Responsibilities;
 - (iii) to enable action to be taken when in the life of a Presbytery there is conflict or when there are issues of non-compliance with the Functions and Responsibilities;
 - (iv) to give the opportunity for the leadership and the wider membership of the Presbytery as a whole to challenge one another as to the effectiveness or otherwise of the Presbytery's structures and the functioning of them;
 - (v) to hear of and celebrate good practice by Presbyteries and share such with the wider Church; and
 - (vi) to assist with the co-ordination of the central resourcing of the wider Church.
- b. the "Committee" shall mean the Presbytery Review Committee, a Standing Committee of the General Assembly, comprising a Convener, Vice-Convener and eleven members nominated by the Nomination Committee and appointed by the General Assembly, together with *ex officio* the Principal Clerk and the Depute Clerk. In making nominations to the Committee, the Nomination Committee shall seek to ensure a balance of ministers, elders and members on the Committee, and also shall aim for gender and geographical balance. Membership of the Committee shall include persons with considerable experience of Presbytery life, of Church life, of regulatory functions, of charity governance, of Church law, practice and procedure and of the operation of Church courts. Appointments shall be for a three year term with some initial appointments being of shorter terms to stagger those stepping down from the Committee in future years. No current employee of a Presbytery shall be a member of the Committee or co-opted onto a Review Group.
- c. "Functions and Responsibilities" shall mean the Functions and Responsibilities of a Presbytery set out in section 10 of the Church Courts Act (Act VI 2023).
- d. "Presbytery Review" shall mean the process of review of a Presbytery by the Committee as set out in this Act, in addition to the annual inspection of records referred to in section 4, and "Review" and "Reviewed" shall be construed accordingly.
- e. "Review Group" shall mean the Review Group appointed under section 3.3.
- f. "Review Report" shall mean the Review Report referred to and the contents of which are described in section 6.1.
- g. "Summary Report" shall mean the Summary Report described in section 6.4.

2. PRESBYTERY REVIEW

2.1 Each Presbytery shall be subject to Presbytery Review, to achieve the Aims, according to a schedule of visits determined by the Committee.

2.2 Presbyteries shall participate and cooperate in Presbytery Review (*Church Courts Act (Act VI 2023), sections 10.1.14 and 15.5*).

2.3 A Presbytery shall normally be subject to Review once every five years but a Review may be delayed or brought forward or an extra Review may be conducted, as the Committee sees fit, where the Committee is concerned that a Presbytery may not be fulfilling its Functions and Responsibilities.

3. THE COMMITTEE'S ROLE

3.1 Responsibility for Presbytery Review is delegated by the General Assembly to the Committee. The Committee shall be clerked by the Office of the General Assembly.

3.2 The role of the Committee is to be satisfied: -

- that each Presbytery Review is thorough and forward looking;
- that key points (a Summary Report) of the Review Report are shared with the General Assembly;

and in particular that:

- good practice is highlighted and shared across the Church;
- problems are faced and tackled with appropriate support and input; and
- non-compliance is addressed and rectified.

3.3 The Committee shall appoint a Review Group of three persons to act on its behalf when embarking on the

Review of a Presbytery. None shall be members of the Presbytery under Review. The Review Group may consist wholly of members of the Committee, or it shall be competent for the Committee to co-opt suitably qualified individual(s) from outwith its membership to be part of particular Review Groups, provided that there shall be no more than one co-opted member per Review Group.

3.4 Members of the Committee must adhere to the conflict of interest policy specified in Guidance.

4. ANNUAL INSPECTION OF RECORDS

4.1 Each Presbytery shall submit annually to the Committee for examination the rolls and records of the Presbytery and shall also submit for attestation by the Committee the trustees' report and annual accounts of the Presbytery.

4.2 The Committee shall report annually to the General Assembly on this inspection of all Presbyteries' records.

5. DOCUMENTS AND VISITS/MEETINGS FOR PRESBYTERY REVIEW

5.1 When a Presbytery is to be Reviewed, on a *proforma* devised by the Committee, the Presbytery will be asked to provide:

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

5.2 On such visits and meetings as they may consider relevant and over such timescale as may be required, the Review Group will enter into conversation with groups and individuals at Presbytery, and also at local and national level, all as it thinks fit, taking account of recommendations in the Guidance. Such discussions shall explore further any aspects of the life and work of the Presbytery in order to learn more about work that is going well or where there may be problems, and to help develop the framework for forward planning.

6. PREPARATION OF A PRESBYTERY REVIEW REPORT

6.1 Having received the documentation and carried out the visits and meetings referred to in section 5, the Review Group shall prepare a written Review Report according to a *proforma* set up by the Committee, which shall include the following:-

- a description of the activities of Presbytery at the time of the Review, giving an indication of priorities, why these were chosen, and how these were implemented, as well as its spiritual life, governance, Committee structure, staffing and how collective decision-making is working in practice;
- the identification of good practice and of areas of work in need of development;
- an outline of any future plans for altering the patterns of Presbytery life and why these changes are envisaged; and
- an assessment of whether the Presbytery is satisfactorily fulfilling its Functions and Responsibilities; and
- any other matters which may seem relevant to the Review Group.

6.2 The initial draft of the Review Report shall be submitted to the Presbytery and an opportunity given to submit comments to the Review Group if desired.

6.3 The Review Group shall then finalise the Review Report and present it to the Committee.

6.4 The Committee shall consider the Review Report and shall ensure that key points including those sharing good practice and making recommendations, are reported in a written Summary Report to the General Assembly. The Presbytery shall be entitled to ask that comments from the Presbytery are included as an Appendix to the Summary Report.

6.5 The Committee's Summary Report for the General Assembly shall be submitted to the Principal Clerk no later than 1st February each year [*Note: once Act is finalised, date can be 1st March*].

6.6 The Committee's Summary Report may make recommendations as to good practice, and may include a proposed deliverance with instructions to a Presbytery or Presbyteries.

7. TERRITORIAL EXTENT

7.1 This Act extends to all Presbyteries of the Church, including those furth of Scotland.

8. GUIDANCE

8.1 Detailed guidance ("the Guidance") for the conduct of Presbytery Review shall be produced initially by the Legal Questions Committee and thereafter the Guidance shall be updated by the Committee in the light of experience and changing circumstances, subject to approval by the Legal Questions Committee.

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

Edinburgh, [] May 2024, 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 5, add at the end: "Where the decision of any court or tribunal in the United Kingdom is relevant to any Charges in the Disciplinary Complaint, that decision will be admissible in evidence, and be held to have established any issue in the Disciplinary Proceedings in respect of which the decision is relevant, unless the contrary is proved."*
2. *In section 22(1)(b) and also section 23, delete "twenty eight (28) days" and substitute "forty two (42) days".*
3. *In section 23, add at the end: "The Assessor shall send the document recording the agreed Censure with consent to the Respondent, the Session Clerk(s) of the congregation(s) concerned, the Presbytery Clerk, the Principal Clerk of the General Assembly and (save where the Respondent is an Elder or Office-Bearer) the Head of the Faith Action Programme, and to the Solicitor of the Church, who shall make it available for public inspection."*
4. *Amend section 37(4) to read: "The Secretary of the Discipline Tribunal shall send the documents referred to in sections 37(1) and 37(3) to each of the parties, the Session Clerk(s) of the congregation(s) concerned, the Presbytery Clerk, the Principal Clerk of the General Assembly and (save where the Respondent is an Elder or Office-Bearer) the Head of the Faith Action Programme, and shall make them available for public inspection."*
5. *In section 38 add a new sub-section (4) and renumber the existing sub-section (4) as sub-section (5): "The Secretary of the Discipline Tribunal shall send the document referred to in section 38(3) to each of the parties, the Session Clerk(s) of the congregation(s) concerned, the Presbytery Clerk, the Principal Clerk of the General Assembly and (save where the Respondent is an Elder or Office-Bearer) the Head of the Faith Action Programme, and shall make it available for public inspection."*
6. *In section 49 after "appeal following thereon", add the words "and (c) where a Respondent is making an admission under Part 9 (Accelerated Procedure)" so that section 49 reads as follows:*

"A Respondent shall be entitled to apply for financial assistance towards the costs of legal representation (a) where a Censure with consent is being accepted, (b) in the conduct of Disciplinary Proceedings under Part 8 and any appeal following thereon, and (c) where a Respondent is making an admission under Part 9 (Accelerated Procedure), in each case in terms of the Legal Aid in Disciplinary Proceedings Regulations (Regulations I 2018)."

Appendix C**[] REGS AMENDING THE LEGAL AID IN DISCIPLINARY PROCEEDINGS REGULATIONS (REGS I 2018)**

Edinburgh, [] May 2024, Session []

The General Assembly hereby enact and ordain that the Legal Aid in Disciplinary Proceedings Regulations (Regs I 2018), shall be amended as follows:

1. *In section 1(1):*
 - (a) *delete the words "the Discipline of Ministry Act (Act III 2001) ("the 2001 Act"), or", and also "Part 4 of the 2001 Act or";*
 - (b) *after "or who wishes to accept a Censure with consent in terms of the 2019 Act," add the words "or who is making an admission under Part 9 of the 2019 Act (Accelerated Procedure)";*

so that section 1(1) reads as follows:

"Applicant" shall mean a person (1) who is subject to discipline in terms of the Discipline Act (Act I 2019) ("the 2019 Act"), (2) against whom disciplinary proceedings have been initiated in terms of Part 8 of the 2019 Act, or who wishes to accept a Censure with consent in terms of the 2019 Act, or who is making an admission under Part 9 of the 2019 Act (Accelerated Procedure), and (3) who is an applicant for legal aid;"

2. *In section 3:*
 - (a) *Delete the words "Part 4 of the 2001 Act or";*
 - (b) *add at the end: ", or (3) where the Applicant is making an admission under Part 9 of the 2019 Act (Accelerated Procedure), in which case any award shall be restricted to the cost of work required to enable the admission(s) to be made, the Joint Minute to be negotiated and agreed and the Applicant to be represented at the diet at which the Discipline Tribunal's decision is made";*

so that section 3 reads as follows:

"An Applicant shall be entitled to apply to the Sub Committee for legal aid in respect of legal costs incurred by him or her in one or other of the following situations:

- (a) in relation to disciplinary proceedings initiated in terms of Part 8 of the 2019 Act, and any appeal following thereon, in which case any award shall be restricted to the cost of work undertaken after the initiation of such disciplinary proceedings, or
- (b) where the Applicant wishes to accept a Censure with consent in terms of the 2019 Act, in which case any award shall be restricted to the cost of work required to enable the Censure with consent to be accepted, or

- (c) where the Applicant is making an admission under Part 9 of the 2019 Act (Accelerated Procedure), in which case any award shall be restricted to the cost of work required to enable the admission(s) to be made, the Joint Minute to be negotiated and agreed and the Applicant to be represented at the diet at which the Discipline Tribunal's decision is made."
- 3. *In section 4, insert a new paragraph 4(c) as follows and re-letter the existing paragraph 4(c) as 4(d):*
"whether the Applicant is obliged in terms of section 22(1)(b) or section 38(1) of the 2019 Act to take legal advice before agreeing to a Censure with Consent or a Joint Minute under the Accelerated Procedure; and"