

I. DISCIPLINE OF ELDERS, READERS AND OFFICE BEARERS ACT (AS AMENDED BY ACT IV 2011, ACT IV 2012, ACT V 2014 AND ACT V 2018)

Edinburgh, 20 May 2010, Session I

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

1. For the purposes of this Act:
 - (a) 'disciplinary offence' shall mean:
 - (i) conduct which is declared censurable by the Word of God, Act of the General Assembly or established custom of the Church or
 - (ii) a breach of a lawful order of any court of the Church;
 - (b) 'Respondent' shall for the purposes of this Act only mean an elder (whether or not a member of a Kirk Session), reader or other office bearer against whom a complaint has been made;
 - (c) 'office-bearer' shall for the purposes of this Act only mean an individual who serves on a Congregational Board, Deacons' Court or Board of Management, or any other body deemed by the Presbytery to form part of the governance arrangements of the congregation, or on any Committee of any of these bodies or of a Kirk Session or Presbytery, and shall for the avoidance of doubt include all Clerks and Treasurers whether or not such individuals serve as voting members of any such governing body;
 - (d) 'complaint' shall for the purposes of this Act only mean a complaint that a disciplinary offence has been committed;
 - (e) 'Presbytery' shall mean the Presbytery in whose bounds is the congregation of which the Respondent is a member;
 - (f) 'The Judicial Proceedings Panel' shall mean the Panel referred to in section 1(1)(e) of Act III, 2001 (as amended);
 - (g) 'Special Committee of Presbytery' shall mean a Committee of three persons appointed from the Judicial Proceedings Panel in terms of section 8 of whom at least one will be a minister and one an elder.
2. For the avoidance of doubt it is declared that any proceedings under this Act are part of the exclusive jurisdiction of the Church and in accordance with the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual, as hereby interpreted by the Church.
3. For the avoidance of doubt, where an individual against whom an allegation of a disciplinary offence is made is a minister, licentiate, deacon or graduate candidate, the provisions of Act III 2001 anent Discipline of Ministers, Licentiates, Deacons and Graduate Candidates shall apply and the Presbytery shall proceed in terms of that Act.
4. For the avoidance of doubt, where an individual against whom an allegation made in terms of this Act is an employee of any Court or Committee of the Church, and that allegation arises within the context of that individual's employment, the provisions of civil employment law shall apply.
5. Where an allegation is made to which the provisions of Act IV 2007 anent Bullying apply, this Act may not be invoked.

6. When in the course of proceedings under Act I 2011 (anent Local Church Review) or Act I 1988 (anent Congregations in an Unsatisfactory State) the Presbytery receives notice of circumstances indicating that a disciplinary offence may have been committed by an elder, reader or other office-bearer, it may either proceed simultaneously in terms of this Act or resolve to initiate proceedings under this Act following the completion of the existing proceedings.
7. A Presbytery shall initiate investigatory proceedings as soon as it comes to the notice of the Presbytery that (a) the name of a person over whom it has jurisdiction has been placed on the Sex Offenders' Register or included in the Children's List and/or the Adults' List kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof), and/or (b) a person over whom it has jurisdiction has failed to advise the Church's Safeguarding Service of (i) any act, default or omission, or (ii) any circumstances arising, bearing upon that person's suitability to undertake Regulated Work as defined in the Protection of Vulnerable Groups (Scotland) Act 2007 (or any subsequent modification, replacement or re-enactment thereof).

Allegation of Disciplinary Offence

8. On receiving notice of circumstances indicating that a disciplinary offence may have been committed, the Superintendence Committee of the Presbytery shall within seven days (or within a longer period for which the Presbytery can reasonably show necessity) appoint from the Judicial Proceedings Panel a Special Committee of Presbytery in terms of section 1(g). In so appointing, the Superintendence Committee shall not select anyone to serve on a Special Committee who is a member of their own Presbytery. For the avoidance of doubt it is expressly declared that in so appointing the Superintendence Committee shall have all the powers of Presbytery.
9. At the request of the Special Committee of Presbytery, or on its own initiative, the Presbytery may at any time impose upon the Respondent an administrative suspension, being an instruction by the Presbytery to the individual to abstain from the exercise of all the functions of his or her office until proceedings under this Act are finally disposed of; and it shall not constitute a form of censure.
10. If at any stage of proceedings under this Act the Respondent admits to any or all of the allegation(s), and the Special Committee of Presbytery is willing to accept such an admission and abandon its consideration of any part of the allegation not admitted, the Special Committee shall, with the consent of the Respondent, produce a Report for Presbytery recommending summary disposal of the case in terms of section 24.
 - (1) In the event that the Presbytery approves the decision of the Special Committee, the Presbytery shall proceed to dispose of the case in terms of section 24.
 - (2) In the event that the Presbytery does not approve the decision of the Special Committee, it shall give such further instruction to the Special Committee as is necessary.
11. The Special Committee of Presbytery may sist proceedings pending the outcome of any civil or criminal proceedings which relate to the allegation or part of the allegation. Where the allegation made to the Presbytery is the same as a charge brought against

the Respondent in criminal law, a criminal conviction shall be deemed by the Presbytery to satisfy the standard of proof, for the purposes of this Act.

12. The Special Committee of Presbytery shall meet separately with the complainer (if any), with the Respondent, and with any other individuals the Special Committee believes it appropriate to meet. The purpose of these meetings shall be to ascertain a preliminary account of the circumstances.
13. The Special Committee of Presbytery shall, if it believes it is appropriate to do so, institute steps to effect mediation or conciliation between or among the parties, and these steps and their outcome shall be reported to Presbytery through the Superintendence Committee. The report to Presbytery need not contain the names of any of the parties in the event that the steps have, in the opinion of the Superintendence Committee, resolved the complaint without the need for further action on the part of the Presbytery.

Initial Consideration

14. In the event that the complaint has not been resolved through the steps referred to in section 13, the Special Committee of Presbytery shall consider whether to carry out an investigation.
15. The Special Committee of Presbytery shall intimate in writing to the Respondent the nature of the offence alleged and the nature of the evidence purported to exist in support of the allegation and shall offer him or her the opportunity to make any answer thereto, provided that he or she shall not be obliged to answer.
16. In considering whether to carry out an investigation the Special Committee of Presbytery shall have regard to all the relevant facts, and in particular
 - (a) the bona fides of any person making an allegation that a disciplinary offence may have been committed;
 - (b) any representation by the person who is the subject of the allegation;
 - (c) the preliminary account ascertained in terms of section 12; and
 - (d) the gravity of the alleged offence.For the avoidance of doubt the standard of proof throughout proceedings shall be the balance of probabilities.
17. (1) If the Special Committee of Presbytery decides that it is not appropriate to carry out an investigation in respect of all or any of the allegations made, the Special Committee of Presbytery shall report that decision to the Presbytery for its approval. At the same time the Special Committee shall also advise the person or persons (if any) who made the allegation or allegations of its decision and the reasons for it. The Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart.
 - (2) (a) In the event that the Presbytery approves the decision of the Special Committee, it shall recall any administrative suspension imposed in terms of section 9. The Presbytery shall intimate its approval of the Special

Committee's decision to the person or persons (if any) who made the allegation or allegations.

- (b) For the avoidance of doubt an approved decision that it is not appropriate to carry out an investigation into all or any of the allegations made shall not be subject to appeal or dissent and complaint or any other form of review other than a procedural review carried out by three members of the Judicial Proceedings Panel appointed by the Legal Questions Committee.
 - (c) Said review must be requested by the person or persons who made the allegation or allegations within fourteen days of the date upon which the Presbytery intimated its approval of the decision of the Special Committee of Presbytery.
 - (d) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific numbered propositions, the grounds (as specified at sub-paragraph (f) below) which the person or persons making the allegation or allegations consider justify such a review taking place.
 - (e) In intimating its approval of the Special Committee's decision to the person or person who made the allegation or allegations, the Presbytery shall advise of the right to a procedural review.
 - (f) A procedural review can be sought only on one or both of the following grounds: (a) that there was an irregularity or breach of the principles of natural justice in the process followed by the Special Committee which materially influenced its decision; and, (b) that its decision was materially influenced by some incorrect fact.
 - (g) In the event that the persons so appointed to carry out such a procedural review determine that one or both of the foregoing grounds have been established, they shall order a new investigation to be carried out by a different Special Committee of Presbytery selected from the Judicial Proceedings Panel.
 - (h) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review.
- (3) In the event that the Presbytery does not approve the decision of the Special Committee, it shall give such further instruction to the Special Committee as is necessary.

Investigation of Complaint

18. If the Special Committee of Presbytery decides to initiate investigatory proceedings it shall:
- (a) give notice to the Respondent of the decision to investigate the case and of the allegation or allegations which are to be investigated;

- (b) give notice to the Presbytery of that decision and of the allegation or allegations which are to be investigated; and
 - (c) give notice to the Legal Questions Committee, which shall appoint a legally qualified assessor to advise the Special Committee of Presbytery on matters of law and procedure, if it has not done so by invitation at an earlier stage.
19. On receipt of the notice referred to in section 18(b), the Presbytery shall make such arrangements as appear to it appropriate for the provision of pastoral support for the Respondent and his or her family, for the person or persons who made the allegation and for any witnesses within the bounds of the Presbytery.
 20. The Special Committee of Presbytery shall carry out such investigations as it deems necessary to determine whether a disciplinary offence may have been committed, and shall keep a Record Apart of the investigatory proceedings.
 21. Before reaching any conclusion, the Special Committee of Presbytery shall make known to the Respondent the substance of the complaint made against him or her and the nature of the evidence existing in support of the allegation and shall offer him or her the opportunity to make any answer thereto; provided that he or she shall not be obliged to answer.
 22. (1) Upon consideration of the allegations and evidence submitted and of any answers given, the Special Committee of Presbytery shall be entitled to resolve that no further investigation shall be carried out if there is no case to answer. In that event, it shall report to the Presbytery for approval. At the same time the Special Committee shall also advise the person or persons (if any) who made the allegation or allegations of its decision and the reasons for it. The Special Committee of Presbytery may also issue guidance to the Respondent regarding his or her conduct. Such guidance will be kept in a Record Apart.
 - (2) (a) In the event that the Presbytery approves the decision of the Special Committee, it shall recall any administrative suspension imposed in terms of section 9. The Presbytery shall intimate its approval of the Special Committee's decision to the person or persons (if any) who made the allegation or allegations.
 - (b) For the avoidance of doubt an approved decision that no further investigation shall be carried out shall not be subject to appeal or dissent and complaint or any other form of review other than a procedural review carried out by three members of the Judicial Proceedings Panel appointed by the Legal Questions Committee.
 - (c) Said review must be requested by the person or persons who made the allegation or allegations within fourteen days of the date upon which the Presbytery intimated its approval of the decision of the Special Committee of Presbytery.
 - (d) Such request shall be made by sending or delivering a written request to the Presbytery Clerk, and such request shall also intimate, in brief specific

numbered propositions, the grounds (as specified at sub-paragraph (f) below) which the person or persons making the allegation or allegations consider justify such a review taking place.

- (e) In intimating its approval of the Special Committee's decision to the person or person who made the allegation or allegations, the Presbytery shall advise of the right to a procedural review.
 - (f) A procedural review can be sought only on one or both of the following grounds: (a) that there was an irregularity or breach of the principles of natural justice in the process followed by the Special Committee which materially influenced its decision; and, (b) that its decision was materially influenced by some incorrect fact.
 - (g) In the event that the persons so appointed to carry out such a procedural review determine that one or both of the foregoing grounds have been established, they shall order a new investigation to be carried out by a different Special Committee of Presbytery selected from the Judicial Proceedings Panel.
 - (h) The decision of the procedural review shall be final and not subject to appeal, dissent and complaint or any other form of review.
- (3) In the event that the Presbytery does not approve the decision of the Special Committee, it shall give such further instruction to the Special Committee as is necessary.
23. In the event that the Special Committee of Presbytery decides to proceed further in terms of this Act, it shall bring a report to the Presbytery in numbered paragraphs stating its findings in fact and a recommendation as to disposal of the case. The Presbytery shall hear and dispose of the Report.

Disposal of Complaint

24. The Presbytery shall dispose of the case as seems appropriate to it. The disposals available to the Presbytery shall include the following, and may consist of a combination of elements:
- (a) Instruction to any party regarding future conduct; disobedience of such instruction constituting the disciplinary offence of contumacy;
 - (b) reprimand, which shall be an expression of disapproval of particular behaviour with counsel regarding future conduct;
 - (c) removal from a particular office held, including removal from membership of a Kirk Session;
 - (d) deprivation of status as an elder, subject to future restoration by the Presbytery, or of status as a Reader, subject to future restoration by the Presbytery in consultation with the Ministries Council.

Miscellaneous

25. If either the Special Committee of Presbytery or the Respondent is dissatisfied with a decision made by a Presbytery in terms of section 24 of this Act, they may appeal to

the Judicial Commission in terms of the Appeals Act (Act I 2014), on the basis of one or more of the grounds of appeal set out in section 2(3) of that Act. Such appeal must be intimated within fourteen days of the decision.

26. No legal expenses in connection with proceedings under this Act shall be met from the funds of the Church. At the request of the Respondent the Presbytery shall appoint a person familiar with the practice of church law to act as an adviser to him or her. If not accompanied by such an adviser, at all stages of the proceedings under this Act the Respondent shall be entitled to be accompanied by one individual chosen by the Respondent, who shall not have the right to speak.

Consequential Amendments

27. Act XI 1707 (the 'Form of Process') and Act XIX 1889 (Act on Forms and Procedure in Trial by Libel and in Causes Generally) shall cease to apply in relation to proceedings under this Act.
28. Act III 2000 (Consolidating Act anent Church Courts) (as amended) is hereby further amended by the addition in sub-section 37(1), after 'execution,' of the words 'and, subject to the provisions of Act I 2010,'
29. Act VI 2002 anent Co-operation by Presbyteries (as amended) is hereby further amended by the removal in section 2 of the word 'or' and the addition, to the end of section 2, of the words "and Act I 2010".