

(CE-ORGAN-Non-PVG-KS)

Preliminary Notes

1. This style is for congregations constituted other than in terms of the Model Constitution i.e. with a Unitary or *Quoad Omnia* Constitution or with a Deacons' Court or a Board of Management. If you are operating under the Model Deed of constitution, you should use the Congregational Board style.
2. It is important that the endnotes and the references contained within the style contract are **removed** prior to the issue of the contract to the employee either in draft or final form.
3. This post is one where the nature of the duties **DO NOT** constitute “regulated work” with children and/or protected adults (see the job description attached). The post holder, therefore, does not require to be checked via the Church’s Safeguarding Service with a view to becoming a Scheme member in terms of the Protection of Vulnerable Groups (Scotland) Act 2007 (“PVG”). Indeed, it would be unlawful to require this.

It remains important however that a proper recruitment process (including the obtaining of satisfactory references) is carried out. Some additional safeguards should be adopted if the Organist is permitted to tutor children and young people using the church organ (see note 22).

For further information or if you are in any doubt as to whether the duties of the post will in fact constitute regulated work within the meaning of the PVG Act, please contact the Safeguarding Service at telephone number 0131 240 2256, Email: safeguarding@cofscotland.org.uk

4. For general advice, including details of the National Minimum Wage, see our Employment Law Circular at:

http://www.churchofscotland.org.uk/data/assets/pdf_file/0019/2818/law_employment_law.pdf

CONTRACT OF EMPLOYMENT

as

THE ORGANIST ¹ of

.....²

CHURCH OF SCOTLAND CONGREGATION

1. Employer

The Employer is the Kirk Session of ³
Church of Scotland Congregation, Scottish Charity Number SC0 per the
Session Clerk (“the Employer”).

2. Employee

The Employee is ⁴

3. Commencement

The Employment commences on ⁵
which is the date of commencement of continuous employment.

4. Duties etc.⁶

The Employee will carry out diligently the whole duties pertaining to the post of Organist as detailed in the description set out in Schedule 1 to this contract, as such duties may be adjusted from time to time by the Employer.

5. Place(s) of Employment ⁷

The Employee’s place(s) of work is/are

6. Salary

Salary will be payable at the rate of £⁸ per annum, payable in arrears per calendar month. The salary will normally be reviewed annually by the Employer.

7. Hours of Work etc

The Employee’s normal hours of work will amount to ⁹ hours per week but he/she will work sufficient hours properly to complete the duties incumbent upon him/her.

8. Holidays

The holiday year is from 1st January to 31st December. Holiday entitlement is ¹⁰ weeks *per annum*, the period during which holidays may be taken being at the discretion of the Employer. If, on termination of the Employment, holidays already taken exceed entitlement, the Employer reserves the right to deduct the equivalent sum from any monies owing to the Employee at the time.

9. Sickness Pay and Benefit

In any period of twelve consecutive months;

- (a) The Employee will be granted full salary during the first ¹¹ months/weeks of sick leave and half salary for the next months/weeks. At the discretion of the Employer, the period of full pay and/or half pay may be extended.
- (b) For absences through illnesses of no more than one Sunday the Employee shall self-certify, in writing to the Session Clerk, the reason for his/her absence. In all other cases of absence through illness, medical certificates must be presented to the Session Clerk and any National Insurance Benefits receivable will be deducted from the gross salary payable.
- (c) Such period or periods of full pay and/or half pay shall not exceed in total 13 weeks in any consecutive 12 month period.

10. Pensions ¹²

The Employment is not pensionable. The Employer does not operate a pension scheme in which a pensions Contracting-out Certificate is in force.

11. Organist's Expenses ¹³

The Employee shall be entitled to claim from the Employer a refund of the cost of postages, stationery, telephone calls and other expenses reasonably incurred in the pursuit of his/her duties. Such expenses shall not include the cost of organ music or travel. The Employee shall keep a record of his/her expenses and obtain the approval of the Session before incurring any large or unusual expenditure.

12. Allowance for Music ¹⁴

A sum of not more than £ shall be made available annually for the purchase of choral music which shall remain the property of the Employer. The Employee shall make purchases at his/her discretion within this approved sum; the accounts therefor will be checked by the Employee and delivered to the Treasurer of the said Congregation duly initialled for payment. The amount of the allowance shall be reviewed every two years.

13. Notice of Termination of Employment ¹⁵

The Employer will give the following notice of termination of employment except in cases of misconduct of a serious nature when the Employee may be suspended or dismissed:

<u>Period of Continuous Employment</u>	<u>Period of Notice</u>
Up to one month:	None
More than one month but less than 2 years:	1 week
Thereafter increasing by 1 week for every year of continuous employment up to a maximum of:	12 weeks

The Employee will give a minimum of two months notice of intention to resign.

It is understood that the Kirk Session of the Congregation has power to suspend or terminate the appointment of the Employee all in accordance with the terms of this Contract.

14. Disciplinary Matters ¹⁶

The matters which can lead to disciplinary action or dismissal by the Employer include the following:-

- i. Irregular attendance at work.
- ii Persistent lateness in attending to duties.
- iii Unsatisfactory work performance over a reasonable period of time.
- iv An unwillingness to accept authority or failure to carry out any reasonable instruction given in the course of duty.
- v. Disclosure of information acquired in the course of duty or any wilful act or default which prejudices the interests of the Congregation.
- vi. Action or behaviour likely to reflect adversely on the Church of Scotland or bring its name into disrepute.
- vii Failure to notify the Session Clerk of non-attendance at work.
- viii Failure to produce medical evidence of illness lasting more than five days.

The disciplinary procedure set out in Schedule 2 annexed shall apply to the Employment.

15. Redress of Grievances ¹⁷

The grievance procedure set out in Schedule 3 annexed shall apply to the Employment.

16. Direction of the Minister ¹⁸

In the conduct of public worship, the Employee will be subject to the direction of the Minister of the Charge.

17. Dress ¹⁹

At all diets of worship on Sundays or otherwise, the Employee shall be suitably and appropriately dressed.

18. Protection of Children and Young People/Protected Adults ²⁰

The Employee acknowledges that he/she has received, read and understood the Church of Scotland's Code of Good Safeguarding Practice. He/she undertakes to comply with the Code and relative Church of Scotland Safeguarding guidelines in so far as relating to his/her employment. He/she understands that it is his/her duty to protect any children and young people/protected adults with whom he/she comes into contact. He/she is aware of what action to take if abuse is discovered or disclosed. In the event of the duties of the post being amended by agreement so as to constitute regulated work with children and/or protected adults, the Employee acknowledges that he/she will require to become a scheme member in terms of the Protection of Vulnerable Groups (Scotland) Act 2007.

19. In these terms and conditions no particulars are entered in respect of the matters covered by paragraphs (g), (j) and (k) of Section 1 (4) of the Employment Rights Act 1996²¹ ²²: IN WITNESS WHEREOF this and the [23] pages and the three Schedules annexed are signed by the parties as follows:-

.....
Employee

.....
Session Clerk (for and on behalf of the Employer)

.....
Date

.....
Date

.....
Witness Signature

.....
Witness Signature

.....
Witness full name

.....
Witness full name

.....

.....

.....

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.....

.....

.....
Witness address

.....
Witness address

SCHEDULE 1 ²³

referred to in the foregoing Contract

The Employee will carry out the whole duties pertaining to the office of Organist In fulfilment thereof the Employee shall:-

- (1) play the organ at the ordinary Sunday services, at the Sunday School and at such other services as the Employer may require. He/she shall not be obliged to play on weekdays at times which interfere with his/her weekday employment.
- (2) be responsible for the recruitment, training, smooth running and satisfactory organisation of the congregation's choir. He/she shall conduct weekly practices with the choir during the period from September to April in each year or at such frequency or times of the year as may be agreed with the Employer.
- (3) be responsible, in liaison with the Minister, for developing the use of music within worship by means, for example, of the formation of a Praise Band/other Instrumental Group and also by increasing the sung repertoire of the Congregation.
- (4) play (subject to his/her attendance not interfering with his/her weekday employment) at wedding and funeral services and all other services not specified in paragraph (1) and he/she shall be paid the proper fee by those who engage him/her. The fee shall be £ , shall be payable by the wedding couple/the family of the deceased as appropriate and shall be reviewed annually. The Employee will also be entitled to charge an additional fee of £ in respect of services which are recorded by audio/visual means. This fee shall also be reviewed annually. The Employee may waive his/her right to play at such services and shall not then be entitled to his/her fee.
- (5) carry out such additional duties as may reasonably be requested from time to time.

SCHEDULE 2

referred to in the foregoing Contract

DISCIPLINARY PROCEDURE

The Employee shall be responsible on a day to day basis to ²⁴ who may, if his/her work or conduct is considered unsatisfactory, arrange an informal meeting with him/her to explain any shortcomings and suggest ways of correcting them in the future. This is not part of the formal procedure set out below. If the Employee's work performance or conduct is considered sufficiently serious, then a formal procedure shall be implemented as set out below.

When the ²⁵ raises something with the Employee which he/she feels may lead to the formal procedure being implemented he/she will write to the Employee confirming the nature of the problem, agreed objectives to remedy it and the timescale within which any breaches must be rectified. These informal warnings may be kept as a record for a period of six months and any further breaches may lead to the formal procedure being implemented.

Formal Procedure

1. The formal procedure will be implemented by the Employer if the informal stage fails to result in the desired improvement or in the case of any matter that is considered sufficiently serious. The Employer will arrange to establish the facts of the case to decide whether disciplinary action may be required. In some instances this will involve the holding of an investigatory meeting with the Employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the Employer for use at any disciplinary hearing. Where this is practicable, such investigation will be carried out by someone other than the person who conducts any subsequent disciplinary hearing. Following such investigation, if it is decided that a disciplinary hearing is appropriate, the ²⁶ will send to the Employee a written statement setting out the nature of the alleged misconduct or poor performance and its possible consequences in good time for him/her to consider the contents prior to the meeting referred to below.
2. Following the production of the statement referred to in paragraph 1 above, the [w] will, as soon as reasonably practicable, arrange a disciplinary meeting with the Employee and with such other persons as the Employee or the Employer may consider necessary. The Employee is entitled to be accompanied by a fellow Employee or another person of the Employee's choosing who has had no involvement in the matter. If the date or time arranged for the meeting is unsuitable, the Employee may suggest another date or time within 5 working days from the hearing date that has been proposed. The Employee may be entitled to call witnesses at such a meeting but must first give the [x] reasonable notice of the witnesses that he/she intends to call.
3. The disciplinary meeting shall be conducted by a Committee set up by the Employer to consider the complaint. After taking submissions and evidence from the Employee,

any witnesses that the Employee may have called and from any other appropriate sources, the Committee shall decide what action should be taken and may:-

- (a) decide that the Employee is not in breach of the Contract of Employment;
 - (b) consider that there has been a breach which warrants the issuing of an oral warning that such a breach must not recur;
 - (c) in more serious cases, issue a formal written warning that any repetition of the breach will result in the employment being terminated;
 - (d) terminate the employment with notice either where there have been previous warnings or the conduct has been sufficiently serious to warrant such dismissal;
 - (e) terminate the employment without notice where the breach of contract is considered sufficiently serious to warrant summary dismissal.
4. (a) The decision of the Committee will be communicated to the Employee and confirmed in writing, together with notification of the Employee's right to appeal the decision. Any warning will indicate the breach of the Contract of Employment and what steps the Employee must take to prevent a repetition of such breach. The Employee will also be informed that if his/her performance remains unsatisfactory after written notice of breach and of the improvements required after the expiry of the period of time within which it is expected that the improvements should be achieved, or if further breaches occur, the Employee will be dismissed. Any such written notice shall state the period for which it shall remain in force.
- (b) If the decision is that the Employee shall be dismissed, then the written Notice of Dismissal shall state the misconduct which had led to the dismissal, why the Employee is guilty of that misconduct and shall notify him/her of his/her right of appeal.
5. If the Employee is dissatisfied with that decision then he/she may appeal against it in writing to the [y]. Such appeal must be made in writing to [z] within 5 working days of receiving written confirmation of that decision and must set out the reasons or other submissions the Employee wishes to make. The Employer may require such submissions to be supplemented orally or in writing as considered appropriate.
6. On receipt of the Employee's notification of the desire to appeal, an Appeal Committee shall be set up by the Employer which shall be entitled to seek such other submissions, orally or in writing, from the Employee or such other persons as the Appeal Committee may think fit, and shall then either confirm a decision or substitute it with such decision as it considers appropriate. ²⁷

SCHEDULE 3

referred to in the foregoing Contract

GRIEVANCE PROCEDURE

If the Employee has any grievance relating to his/her Employment then this should, in the first place, be raised on an informal basis with ²⁸

If the Employee is dissatisfied with the response then he/she should initiate the formal grievance procedure. To do that the Employee must set out his/her grievance in writing and send the statement, or a copy of it, to ²⁹

Thereafter, the Employer will arrange within 14 days (or as soon as reasonably practicable) a meeting to discuss the grievance. The meeting cannot take place unless the Employer has had a reasonable opportunity to consider his/her response to the written statement. The Employee must take all reasonable steps to attend the meeting. The Employee is entitled to be accompanied by a fellow Employee or another person of the Employee's choosing who has had no involvement in the matter. If the date or time arranged for the meeting is unsuitable, the Employee may suggest another date or time within 5 working days from the hearing date that has been proposed. The Employee may be entitled to call witnesses at such a meeting but must first give the [x] reasonable notice of the witnesses that he/she intends to call.

After the meeting, the Employer must inform the Employee in writing without unreasonable delay of his/her decision in response to the grievance and notify him/her of the right of appeal against the decision if the Employee is not satisfied with it.

If the Employee wishes to appeal he/she must inform the Employer whereupon the Employer must invite him/her to attend a further meeting within 14 days (or as soon as reasonably practicable). The appeal group which shall hear the appeal shall be made up of members of the Kirk Session who have not been involved in consideration of the initial grievance. The Employee must take all reasonable steps to attend the meeting. After the appeal meeting, the [y] shall inform the Employee in writing and without unreasonable delay of the Employer's final decision.

Where the Employee has ceased to be employed, but wishes to bring to the Employer's attention a grievance which he/she had not raised before the date of termination, the parties may agree to the matter being handled in line with foregoing procedure, except that in that case there will be no right of appeal against the Employer's decision.

Where the Employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both cases concurrently.

TIPS AND NOTES FOR COMPLETION

¹ The job title is given here as ‘Organist’ but, if appropriate, other terms can be used such as ‘Organist and Choirmaster’ etc. You will need to use the same terms consistently throughout the contract.

² Insert the name of the Congregation.

³ Insert the name and charity number of the Congregation.

⁴ Insert the Employee's name.

⁵ The date on which the employee is to start work with you should be inserted here. However, if the employee has previously been employed by you (whether in the same post or a different one) and he/she was so employed immediately before the date on which he/she is to start work under this contract, the date to be inserted above should be the date he/she first started working for you.

Fixed term contracts –

If the contract is to last only for a fixed term, that should be stated in this clause e.g. *The employment commences on 5th June 2011 which is the date of commencement of continuous employment and shall be for a fixed period of two years terminating on 4th June 2013.*

Please note however that the employment rights of a fixed term employee have been put on much the same basis as those of a permanent employee and there may therefore be little advantage to constituting a contract on a fixed term basis. For example, failure to renew a fixed term contract at the end of its term counts as a dismissal. Also after the employee has been with you for a year, they can take a claim to an Employment Tribunal alleging unfair dismissal. It will be a defence if the post has become redundant and a fair process has been followed including the necessary consultation. After more than two year’s employment, the employee in such a case will however be due a redundancy payment. It is quite a complicated topic and, if unsure, please contact us for further advice.

Retirement age

This clause used to specify a retirement age. However, a retirement age at which the employee might be “compulsorily” retired has been removed from the style because of the abolition of default retirement ages.

⁶ This refers to the Job Description which will have to be made up to detail all the expected duties. See No. 24 below for further information.

⁷ This should be completed to list all Churches, halls etc. where the Organist is expected to perform his/her duties.

⁸ Details of guidelines on salary rates as prepared by the Scottish Federation of Organists can be viewed on their website at: <http://www.scotsorgan.org.uk/sfo-04.htm>. Alternatively, details can be obtained from the Administrative Secretary, Worship, Doctrine and Artistic Matters at the Church offices.

⁹ If the number of hours worked per week varies then it will be necessary for the purposes of the Minimum Wage legislation for the Contract to state a daily average number of hours and the following should be inserted in place of what is stated in the style contract:-

The Employee shall work sufficient hours properly to complete the duties incumbent on him or her but the average number of hours to be worked by the Employee shall be per day.

If the average number of hours changes in the course of the contract then a separate “daily average agreement” should be attached onto the agreement. A style is included in our Employment Law Circular. See:

http://www.churchofscotland.org.uk/data/assets/pdf_file/0019/2818/law_employment_law.pdf

¹⁰ The amount of holiday you are giving should be inserted. Currently the statutory minimum entitlement is 5.6 weeks paid holiday per annum and you cannot give less than that. For a post such as this, it may be easier to express holiday entitlement in hours off rather than weeks. For a handy government ready reckoner to help you calculate statutory minimum holiday entitlement click on:

<http://www.businesslink.gov.uk/bdotg/action/layer?r.l1=1073858787&topicId=1079427399&r.l2=1073858926&furlname=annualleave&furlparam=annualleave&ref=&domain=www.businesslink.gov.uk>

Public Holidays

There is no legal entitlement to public holidays or days off in lieu in addition to the statutory minimum entitlement and with a part time employee, depending on when the public holidays fall, this can add complications. However, if you wish to give public holidays, a possible clause (to go in after the second sentence in this clause) could read:

“In addition, there will be an entitlement to X days public holidays or alternatively as agreed between the Employer and the Employee X further days in lieu of public holidays.”

Holiday cover

As this is an Employer/Employee relationship, it is up to the Employer to arrange cover for holidays (and indeed sickness.) The following is a clause you may possibly wish to include to cover other absences.

“Other leave of absence shall only be with the agreement of the Employer and the Employee during such period of absence shall provide and remunerate a competent deputy.”

As in this case, the duties of the Organist do not include regulated work, it is assumed that the same will be the case with any Deputy. However where the duties of the post mean that the Deputy during his or her period of cover will be undertaking regulated work with children and/or protected adults, he/she will require to be a PVG Scheme member. Further advice can be obtained from the Safeguarding Service.

¹¹ There is no obligation on an employer to offer anything other than statutory sick pay to an employee and it is up to the Employer to determine what additional sickness pay it wishes and can afford to give. It is suggested that periods of from one month to three months full pay and a corresponding period of half pay may be appropriate, depending on the circumstances.

¹² Currently, there is no obligation on an employer to provide any form of pension arrangement. Please note however that this is anticipated to change in 2012 when the personal accounts scheme comes into force. Although employees can opt out, all employers will have to enrol automatically all their eligible jobholders (who are aged between 22 and state pension age, earning over £7,475 and not already members of a “good quality” scheme) into either an existing 'qualifying' workplace scheme or the new personal accounts scheme.

¹³ This clause contains a suggested arrangement. You can specify something else – although it would be usual to reimburse costs of this type.

¹⁴ Again, this clause contains a suggested arrangement. You can specify some other – although it would be usual to reimburse costs of this type. You will need to fill in the sum which will obviously vary depending on the circumstances of your congregation and how much new music is needed.

¹⁵ The periods of notice to be given to the employee are the statutory minimum. You can be more generous if you wish. The law does not specify the minimum period of notice an employee must give and you should fix this in accordance with your own requirements. However, if it is too long, it may be difficult to enforce. It is important to note that, for a dismissal to be fair, an employee cannot simply be given notice and dismissed unless the employer has first followed a fair procedure. Further guidance is available from the Law Department should you be contemplating the dismissal of the employee.

¹⁶ You can add or subtract from the list of examples given (although the list is a tried and tested one and should cover most forms of unacceptable conduct). The disciplinary procedure attached complies with ACAS guidelines. If you wish to make substantial changes, please contact us for further advice as the procedural aspects of disciplinary and grievance matters are extremely important and are strictly regulated by the courts.

¹⁷ The same advice as in No 16 above applies.

¹⁸ This reflects the law of the Church and the minister's role in regard to the ordering of public worship.

¹⁹ If you are a more “casual” congregation, you may wish to omit this clause. Alternatively, if you wish a particular garb to be worn e.g. a gown, this should be specified as a requirement.

²⁰ This is hopefully self explanatory but if any further advice is needed, please contact the Safeguarding Service.

²¹ A statement of this kind is required under Section 2(1) of the 1996 Employment Act. Paragraph (g) refers to non-permanent or fixed term employment and if this is a fixed term contract the reference to paragraph (g) in clause 21 will require to be deleted. Paragraphs (j) and (k) refer respectively to collective agreements and working abroad and are not therefore likely to be relevant for a contract of this type but the absence of terms and conditions relative to these matters must be stated as above.

Additional Clauses

²² Depending on circumstances, there may be other clauses you wish to add to cover your particular circumstances. For example, in some congregations, the organist is permitted to use the church's organ for private tuition. A one to one regular arrangement of this type where the pupils are children or young people would by itself trigger the need for PVG Scheme membership. Similarly, even where the tuition is taking place outwith Church premises, the organist should be making parents aware that all parents in such circumstances have the right to request evidence of PVG Scheme membership. This would avoid the mistaken assumption that because the tutor is a Church of Scotland organist, he/she has been cleared to carry out regulated work with children.

A possible clause could read:-

Organ

The Employee shall be permitted to use the organ for private tuition. A charge of £ per hour will be payable by the Employee to the Congregational Treasurer for the use of the organ for practice. The charge shall be reviewed annually. Where the pupils are children or young people under the age of 18 years, the Employee shall provide evidence of PVG scheme membership to the parents/guardians of pupils to demonstrate to them his/her suitability to undertake such work. He/she shall further advise parents/guardians that the tuition is being carried out on a self employed basis and not on behalf of or in connection with the Congregation. The Employer shall be entitled to end the Employee's use of the organ for such tuition in the event of any breach of the terms of this condition.

²³ Here insert the number of previous pages in the contract.

²³ This is only a suggested style and will need to be redrafted to meet your own particular requirements. Not all of the suggested clauses will fit the bill.

²⁴ There should be inserted the name of the office bearer to whom the Employee will be responsible on a day to day basis. It is suggested that it would be preferable to refer to a specific office such as Session Clerk rather than a named individual. In cases where reference is made in the body of the contract to the day to day direction of the employee being the responsibility of the Minister then it is the Minister who should be mentioned at this point.

²⁵ Insert the same office bearer as is referred to in the previous paragraph.

²⁶ Here refer to either the office bearer mentioned in paragraphs 1 and 2 or the office bearer, if different, who will be responsible for dealing with this and the following matters of administration – this will be the person who should also be named at insertions [w, x, y and z] in subsequent paragraphs.

²⁷ The same procedures apply to Appeal meetings as apply to the initial disciplinary meeting i.e the Employee is entitled to be accompanied and to call witnesses. No one who has participated as a decision-maker in the original disciplinary process should subsequently take part in the Appeal process.

²⁸ Insert the name of the office bearer to whom the Employee will be responsible on a day to day basis. It is suggested that it would be preferable to refer to a specific office such as

Session Clerk rather than a named individual. In cases where reference is made in the body of the contract to the day to day direction of the Employee being the responsibility of the Minister then it is the Minister who should be mentioned at this point.

²⁹ Insert the name of the office bearer to whom the statement of the written grievance should be sent. It is suggested that this should be different from the office bearer named above. This office bearer should also be mentioned at x and y in subsequent paragraphs.