

# **GUIDELINES FOR OPERATING THE DEED OF CONSTITUTION (UNITARY FORM)**

## **Introduction**

In preparing these guidelines, there were a number of considerations:

1. The elders are part of the whole congregation and should be careful to engage all members in an appropriate way.
2. The organisation of the Kirk Session should be appropriate to the size of the congregation and the Session itself.
3. These are guidelines only and due attention must be paid to the Deed of Constitution; the Acts and Deliverances of the General Assembly and the appropriate Regulations approved by the General Assembly. The publication “Acts of the General Assembly since 1929”, available from the Principal Clerk’s Office (or online at [http://www.churchofscotland.org.uk/about\\_us/church\\_law/acts](http://www.churchofscotland.org.uk/about_us/church_law/acts) ) and ‘The Constitution and Laws of the Church of Scotland’ edited by James L. Weatherhead are essential reference books.
4. There are many opportunities to be radical and innovative in approach, as is shown in the Assembly Council’s Report on the Eldership to the General Assembly of 2003, to which reference is made throughout the Guidelines.

## **Adopting the Unitary Constitution**

The procedures for adopting the Unitary Constitution are given in the Act anent Congregational Constitutions (Act XIX, 1964 as amended by Act V 2003).

See: [http://www.churchofscotland.org.uk/\\_data/assets/pdf\\_file/0011/1811/1964\\_act\\_19.pdf](http://www.churchofscotland.org.uk/_data/assets/pdf_file/0011/1811/1964_act_19.pdf)

## **First Clause: Functions of Kirk Session**

The Kirk Session has oversight of the whole life and service of the Church within its Parish; responsibility for the spiritual and temporal oversight of the Congregation’s affairs. Its spiritual responsibility involves “leadership, nurturing the spirituality of the congregation and its members, caring for the spiritual welfare of the parish and parishioners, encouraging members to participate in the worship and life of the congregation, and promoting mission and evangelism in the parish.” (Weatherhead)

## **Second Clause: Membership of Kirk Session**

### **Appointment of Elders**

Elders are appointed in accordance with the Act anent Election and Admission of Elders and Deacons (Act X, 1932, as amended) where full details of the procedures will be found. The Act describes the three available methods of appointing elders. These are:

1. nomination and direct election by the members of the congregation;
2. a system of signed lists, in which members of the congregation submit a signed list of names and the names having the greatest numbers of votes are elected;
3. nomination and appointment by the Kirk Session.

It should be noted that the appointment of an elder, by whichever method, is subject to the judgement of the Kirk Session, which may refuse to appoint. It is also open to any member of the congregation to raise an objection on the grounds of 'life or doctrine'.

The need to have an elder to cover each district should not be the sole criterion in deciding on the number of elders required. In this form of constitution, it is envisaged that elders will bring many different gifts to the government of the Church. Some of the suggestions for using non-elders in pastoral care made in the section on Pastoral Care below "would help to free Sessions from the constant pressure to find new recruits, and the need for everyone to visit even if their contribution to the Session is best made in another way." (Assembly Council Report)

### **Term of Service**

Although elders are ordained for life, it is both possible and appropriate to allow elders an opportunity to take time off their duties in some manner and even to retire from the Session. The Assembly Council Report on the Eldership noted that "more opportunities for time out from duties as an elder would be valuable: it would allow them to bring new vision and enthusiasm to their role, and enable them to take a break if circumstances made it difficult to carry out their functions. It would also be an opportunity for in-depth study, reflection, prayer, or training."

Any decision to allow either a temporary cessation of duties or retirement in a particular case should be included in the Minutes of the Kirk Session, to fulfil, *inter alia*, the requirements of charity law.

### **Duties of Elders**

The section above, under 'First Clause', describing the tasks of the Kirk Session provides a general overview of the tasks of an elder. Apart from a duty of attendance at Kirk Session meetings and taking a due part in the decision making process, the duties of a particular elder will be defined by the Kirk Session. Historically, these have included the pastoral care of a district and this continues to be important. However, modern practice favours more attention being given to the special gifts of each elder and it should not be assumed that these will include pastoral visiting. They might include education, fabric, finance or any of the areas of work a Kirk Session identifies.

### **Pastoral Care**

The Kirk Session, directly or through an appropriate committee, has the duty of making arrangements for pastoral districts and appointing one or more persons to have oversight of each district. Such people need not necessarily be elders. One suggestion that came from the Assembly Council Report was that, perhaps, districts might be larger and served by a team of pastoral visitors instead of a single elder. Such a team could involve one or more elders, a magazine distributor, and others with gifts suitable to pastoral visitors.

Among suggestions gathered by the Assembly Council were:

- people may be visited in different ways according to need.
- visitors might follow up weddings, funerals and baptisms with pastoral care.
- instead of geographical districts, elders should care for groups of similar people, such as older people, or recently married couples.

- instead of the elder calling on each of the members in their district, all the members could meet together at the elder's house.
- the elders who had the greatest pastoral gifts could form a team to give extra care to the housebound and hospitalised.
- instead of seeing pastoral care only in terms of visiting, creative thinking should be done to identify and meet the real needs of the parish, for example providing a babysitting service to give parents a break.

### **Third Clause: Moderator and Meetings**

#### **Moderator**

A minister of a charge is a member of the Kirk Session as its Moderator and normally presides at meetings of the Kirk Session. It should be noted that an Overture which may change the arrangements for moderating at a Kirk Session is currently being considered under the Barrier Act. \*\*\*

*\*\*\*Updating note. GA Act VI, 2004 permits the moderating of the Session by a minister or deacon associated with it or by a Session elder, subject always to the detailed provisions about this contained in the Act.*

#### **Form of Meetings**

It is open to the Kirk Session to decide which format of meetings will enable it to carry out its work and enhance its effectiveness.

While individual Kirk Sessions can decide for themselves what is appropriate, the Assembly Council consultation on the Eldership made a number of suggestions which were said to be useful and these are given here to stimulate creative approaches:

- written reports saved time.
- meals before meetings and seats rearranged into a semi-circle increased fellowship.
- a larger devotional element and group discussion allowed consideration of the business on a much deeper level.
- much of the business was delegated to a smaller sub-section, so that full Session meetings could be more spiritual or topical.
- one Session described how they were beginning to elect elders onto an "executive" for three years at a time. The Session and the executive meet alternately, with committees reporting to the executive, and the executive giving one report to the Session, leaving plenty of time for discussion.
- a "leadership team" was formed from the leaders of the main teams ... They meet weekly "to provide advice and assistance for the minister for short term planning and organisation, and to develop long-term strategies". The team reports to the Session, and the strategic plans become the subject of discussion.

Where there are no committees, and sometimes when there are, care should be taken to balance the agenda so that, for example, finance and fabric do not overshadow other important matters such as mission, education or pastoral care.

#### **Functions of the Kirk Session**

A list of the functions of the Kirk Session is given in the Consolidating Act anent Church Courts (Act III, 2000 section 37).

### **Matters Reserved for Kirk Session**

Decisions on matters of discipline, admission to membership and appointment of elders should be made by the Kirk Session itself. It would be appropriate to take such matters in private.

### **Access to Session and Committee Meetings**

By decision of the General Assembly, all meetings of the Kirk Session are presumed to be open meetings and any member of the congregation may attend. This also applies to any committees appointed by the Kirk Session. In particular circumstances, the Kirk Session or committee may decide that the nature of its business requires it to meet in private, and this is allowed. This decision would only apply to the particular business and not the whole meeting.

### **Congregational Meetings**

Congregational meetings must be held in accordance with the Act anent the Calling of Congregational Meetings to Approve the Annual Accounts of Congregations in Certain Cases (Act III, 1994). This Act simply requires that the Annual Accounts of the Congregation be presented for approval. However, as is often the case, the opportunity might be taken to make a fuller report on the life and work of the congregation and its organisations.

### **Fourth Clause: Session Clerk**

The Kirk Session appoints its own Clerk who need not be a member of the Session, but if not, he or she does not become a member because of their office. In order that a Session may make the appropriate use of people's talents, the Kirk Session is at liberty to appoint an Assistant Session Clerk, who may or who may not be a member of the congregation.

The Kirk Session should make a clear decision as to the powers to be delegated to office-bearers, particularly in relation to actions having legal consequences, such as the signing of cheques and of contracts.

### **Session Clerk's Duties**

The Session Clerk is responsible for:

1. the orderly keeping of the records of the Kirk Session, including keeping the minutes in proper form
2. issuing extract minutes
3. dealing with all correspondence.

“A Clerk who signs any document and designates himself or herself as Session Clerk is presumed to be acting with the full authority of the court” (Weatherhead). It follows that the Clerk's signature on a contract legally binds the Kirk Session, and so it is strongly urged that all contracts, except the most routine or conforming to agreed financial guidelines, should be approved by the Kirk Session before being made. It should be noted that, a contract having been signed, the members of the Session may become personally liable in the event of funds proving insufficient.

## **Fifth Clause: Treasurer**

The Kirk Session appoints its own Treasurer who need not be a member of the Session, but if not, he or she does not become a member because of their office.

The Treasurer's duties include the following:

1. The keeping of financial records for all Congregational income and expenditure.
2. The collection and safe custody of all monies due to the Congregation.
3. The prompt payment of all accounts, allocations to Central Funds, etc. due by the Congregation and the retention of vouchers for such payments.
4. The preparation of an Annual Report and Statement of Accounts in compliance with current regulations anent congregational finance as approved by the General Assembly from time to time.
5. Submitting the Annual Report and Statement of Accounts for independent examination or audit, including the production of records, vouchers, certificates, etc. required by the independent examiners or auditors.
6. Following the independent examination or audit, submitting the Annual Report and Statement of Accounts for approval by the Kirk Session.
7. The preparation of an annual Budget of Congregational Income and Expenditure and submission thereof for approval by the Kirk Session.
8. The completion of the annual Schedule of Financial Statistics and transmission thereof to the General Treasurer.

## **Seventh Clause: Maintenance etc. of Properties**

The terms of the Act anent Care of Ecclesiastical Properties (Act IX 1979, as amended) require a Kirk Session to appoint a Fabric Committee and also requires that a Property Register be maintained.

In carrying out work, the Kirk Session must have regard to the Regulations regarding Work at Ecclesiastical Buildings (Regs. 1, 1998 (as amended)) under which it has the duty of obtaining prior approval from the Presbytery and the General Trustees for the proposed carrying out of work in appropriate situations.

Kirk Sessions should note that under the Central Fabric Fund Regulations and the procedures laid down by the General Trustees, all applications to the Central Fabric Fund, Historic Scotland and Lottery Funds for financial assistance must come from the Financial Board, which, under this constitution, is the Kirk Session.

## **Twelfth Clause: Appointment of Church Officials**

When anyone is employed by the Kirk Session, in whatever capacity, a contract should be drawn up, as referred to in the Constitution. It is recommended that such a contract should state to whom the employee is responsible for the performance of their duties and who may direct them in performing them.

Forms of standard contract are available from the Law Department. It is strongly urged that Sessions make use of these, which will help them fulfil the requirements of current employment law, in particular the need to have an acceptable and clear written procedure for dealing with disciplinary matters and employees' grievances.

### **Thirteenth Clause: Constitution and Powers of Committees etc.**

The Kirk Session may delegate any aspect of its work to committees, except those which it is recommended be reserved for the Kirk Session alone (see under Third Clause, above 'Matters Reserved for Kirk Session').

Any committees appointed may be given decision making powers as described in the Deed of Constitution. The Act anent Care of Ecclesiastical Properties (Act IX 1979, as amended) requires that a Fabric Committee be appointed, but otherwise the number and composition of such committees is for the Kirk Session itself to determine. Committees might include "welcome, evangelism, outreach, community, education, communication, development, nurture, youth, membership, eldership, fellowship, hospitality, social, world, and fundraising" (Assembly Council report 2003). Pastoral and Finance Committees might also be considered.

#### **Remits**

Any Committees should be given specific remits, which are reviewed regularly, perhaps each year. Included in these remits should be the area of responsibility delegated to the Committee and any areas in which decision making powers are given to the Committee.

#### **Membership of Committees**

Committees may be appointed from members of the Kirk Session, and others, either from the congregation or outwith it as provided for in the Deed of Constitution. This gives an opportunity to involve people with special skills but also to spread involvement in the process of Church Government.

It is possible, where numbers are limited, for some committees (including the Fabric Committee) to include all the members of the Kirk Session, together with any individuals co-opted as in the Thirteenth Clause, section (b).

It is important to be clear when the Session is meeting as the Kirk Session and when it is meeting as a committee.

#### **Relationship of Committees to Kirk Session**

The Kirk Session is the body charged with making any decision regarding congregational affairs, and any challenge, whether by dissent or appeal, would be against the decision of the Kirk Session, not a committee. The Kirk Session is, therefore, responsible for any decisions made on its behalf.

Nevertheless, care should be taken to avoid unnecessary repetition of business, decided at committee, at Kirk Session level. There are two ways in which this may be done.

One way would be for the remit of each committee to make explicit the extent to which decisions may be implemented without the prior agreement of the Kirk Session. Many courts of the Church already do so with regard to routine financial matters, minor fabric repairs etc.

The second way, which would be in addition to the first, would be for a Kirk Session to have clear criteria for overruling decisions of committees, imposing restraints on itself, so that committees can implement their own routine decisions, knowing that the Kirk Sessions will not arbitrarily reverse decisions.

### **Minister and Committees**

The Kirk Session should consider appointing the Minister to be a member of appropriate committees and should, in any event, treat the Minister as a corresponding member of all Kirk Session committees.