

## GUIDANCE NOTES FOR CONGREGATIONAL OFFICE BEARERS

It would be difficult and indeed perhaps undesirable to attempt to draw up a precise set of rules and list of responsibilities for those embarking upon service on either a Kirk Session, Financial Board or their sub-committees. The diverse nature of the work entrusted to such bodies means that different procedures and working methods may be appropriate and indeed may be required in terms of relevant General Assembly Acts or Regulations or indeed in terms of civil law.

The following notes –which are of necessity therefore in somewhat general terms - are, however, offered by way of guidance.

### 1. Unsanctioned Acts

Most Church of Scotland congregations are now constituted in terms of either the Unitary or the Model Deeds of Constitutions. The consent of the Presbytery may be required in regard to decisions in regard to a number of areas and, in connection with matters involving work at, alterations to or the purchase, sale or lease of heritable property the consent of the General Trustees may also be necessary. Office bearers should therefore familiarise themselves with the provisions of the constitution of the body to which they have been appointed so as to ensure that at all times they are working within its terms and in accordance with the aims and purposes of the congregation. If appointed as a member of a Committee set up by the Session or Board, they should ensure that any decision which the Committee takes lies within the powers delegated to it and that it is timeously reported to its “parent” body. They must also take into account any specific directions issued from time to time by the Assembly which are of relevance.

The following are useful for reference :

- The publication “*Acts of the General Assembly since 1929*”, available from the Principal Clerk’s Office at 121 George Street. This can also be viewed online in the Extranet section of the Church website covering Church law at: <http://www.churchofscotland.org.uk/extranet/xchurchlaw/xchurchlawpracproc.htm>;
- ‘*The Constitution and Laws of the Church of Scotland*’ edited by James L. Weatherhead (also available from the Principal Clerk’s Office).
- ‘*An introduction to Practice and Procedure in the Church of Scotland*’ by Rev A. Gordon McGillivray. This can be downloaded via the above web-page.

Any decisions taken which are outwith and exceed a body’s powers will, from a legal point of view, be void and could involve individual office bearers in personal liability if financial loss resulted, unless he or she has had his or her dissent minuted (see Paragraph 7 below).

### 2. Prudence and Diligence

- It is the expectation that office bearers will discharge their duties with the same prudence and diligence as they would use if they were entrusted with the management of the affairs of another person. This expectation includes regular attendance at meetings, careful attention to written reports and minutes and the ascertaining, whether by the questioning of other office-bearers attending meetings or otherwise, of all information necessary for the making of decisions. At times, office bearers may be called upon to take decisions concerning matters about which they are not competent to make judgements. It is important to “know what you do not know!” In such cases, the safe course is to postpone taking any decision until further advice has been obtained from a suitably qualified person. Congregations, of

course, enjoys the status of being a charity. The Charities and Trustee Investment (Scotland) Act 2005 (“the Charity Act”) places on those involved in the management of charities - termed in the Act as being “Charity Trustees” - certain positive duties as follows:

- to act in the interests of the charity to ensure the charity acts in a way consistent with its charitable purposes;
- to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person;
- where a conflict of interest arises between the charity and any person or body responsible for appointing the charity trustee, to put the interests of the charity first, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question;
- to ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of the Charity Act.

The last bullet point covers a range of miscellaneous matters ranging from a requirement to show that the body is a charity on a wide range of stationery and other documentation to duties in regard to the preparation of and lodging with the Office of the Scottish Charity Regulator (“OSCR”) accounts, an annual return and other documents to keep the entry in the Charity Register up to date.

The Charity Act also prohibits remuneration being paid to a Charity Trustee or anyone “connected” to a Trustee except on strict conditions and where a Remuneration Agreement has been entered into with the Trustee. It appears that the term remuneration is to receive a liberal interpretation and that for example Trustee Indemnity insurance is to count as remuneration. However, the Scottish Executive is currently considering whether to amend the Act to permit such insurance being taken out.

Further guidance in regard to Trustees’ duties has been issued by OSCR and can be viewed by clicking on the link on the OSCR web-site home page ([www.oscr.org.uk](http://www.oscr.org.uk)) or by clicking on: <http://www.oscr.org.uk/PublicationItem.aspx?ID=5b7d7df4-8d70-4aa7-af64-2d65c21ae22d> (However, when reading the guide, you should keep in mind the Church’s exemptions as detailed in the following paragraph.)

Although the Church, as a designated religious charity, has been largely exempted from the regulatory powers available to OSCR and the Court under the Act (including their power to remove or disqualify Charity Trustees and the provisions relating to the circumstances which would disqualify a person from serving as a Charity Trustee), adherence to the above principles is required of those serving on Church bodies. Breaches coming to the knowledge of OSCR could well lead to the removal of the Church’s designated status.

### **3. Property Matters**

When administering the funds and property of their congregation, office bearers are Charity Trustees. They must, therefore, be scrupulous in discharging their duties, all in accordance with the principles of good stewardship. In particular, care should therefore be taken to instruct that all funds are soundly invested. Funds, other than those invested with the Church of Scotland Investors Trust, should be invested so as to comply with the Charity Act. Put briefly, the suitability and need for diversification of investments must be considered and “proper” advice (essentially advice given by experienced investment professionals) must be taken before investing and when reviewing investments. Alternatively, investment management functions can be delegated to professional fund managers. Congregational monies should only be used to further the mission of the

congregation and in connection with the purposes of the Church of Scotland. Any item of property being disposed off should be sold for “best ”price unless there are special circumstances to justify departing from this principle. Again professional advice should be taken, when appropriate. Some of the assets held by the congregation may have been bequeathed or gifted subject to specific conditions as to use or indeed permitting only income to be expended. Scrupulous care should be taken to ensure that such conditions are strictly observed.

#### **4. Civil law responsibilities**

Congregations are finding that they are becoming subject to an increasing burden of regulation in the form of various pieces of statutory legislation. These cover matters as diverse as child protection, Health and Safety, employment law, Fire and Food Safety, Licensing, Data Protection, Smoking and Discrimination legislation. Whilst deliberate flouting of the law is never a good idea, ignorance of it is no defence. Office bearers should keep aware of the legislation which may affect the congregation’s activities. The Law Department publish circulars on “hot topics” and these (and style contracts of employments for congregational employees) can be downloaded from the Department’s section of the Extranet at :

<http://www.churchofscotland.org.uk/extranet/xsupportservices/xsscentralervices.htm>.

The solicitors in the Department are always willing to offer advice by letter, email or telephone where specific problems arise.

#### **5. Duties to Third Parties**

The range of work undertaken by some congregations may inevitably entail the assumption of obligations towards third parties, for example through the making of contracts. Particularly where the fulfilling of contractual obligations may potentially involve major financial expenditure, office bearers should satisfy themselves that sufficient funds are available or assured. Legal advice on the terms of any contract being entered into should also be sought.

#### **6. Conflicts of Duty**

Office bearers should take care to avoid getting into the situation where their duties to the congregation could be said to conflict with their own personal interests. In such circumstances, an office bearer should not take any part in discussions or decisions involving the matter concerned. Equally an office bearer should not use his or her position for personal financial gain or advantage.

#### **7. Conflicts with other Office bearers**

Where an office bearer does not agree with the decision of colleagues, he or she may have their dissent minuted. Where, however, the office bearer considers that a decision has been made which flagrantly breaches the principles set out in these guidelines, the proper course would be to resign and seek further advice from the Presbytery Clerk.

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