

**AN
INTRODUCTION
TO
PRACTICE AND PROCEDURE
IN
THE CHURCH OF SCOTLAND**

A. GORDON McGILLIVRAY

THIRD EDITION (2009)

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PREFACE TO FIRST EDITION

Lectures on Church Law which I have been privileged to give at New College since 1979 to candidates for the ministry of the Church of Scotland form the substance of this volume.

In the early years it was possible to encourage students to supplement the material of the lectures by referring to Cox: *“Practice and Procedure in the Church of Scotland”* and to the popular series of *“Guides”* by the Very Rev. Dr. Andrew Herron. When all these books went out of print without any indication of replacement, the need for something to take their place became increasingly urgent. Retirement made it possible to embark on such an enterprise.

There is always a twofold danger in producing a work of this nature. One is the risk of encouraging the view that it contains, if not all that there is to know on the subject, at least all that needs to be known. This volume makes no such claim for itself. It is at most an Introduction. Certain topics have not been included, notably all matters relating to finance, forms of adjustment, the procedure to amend the Articles Declaratory, and the Act anent Congregations in Changed Circumstances. Those who wish information on these topics or who wish to have a fuller treatment of this whole subject can consult two books which have subsequently been published, viz. *“The Law and Practice of the Kirk”* by the Very Rev. Dr. Andrew Herron¹ and *“The Constitution and Laws of the Church of Scotland”* by the Very Rev. Dr. James L. Weatherhead.

The other danger comes from putting legislation into one's own words. Hopefully, where this has been done, it has not been done recklessly. These dangers, however, should not be minimised, and so it is essential to read in conjunction with this volume *“Acts of the General Assembly from 1929”*, available from the office of the Principal Clerk², as the Acts constitute the primary documents.

Each Assembly brings with it a number of legislative and administrative changes which make it difficult to keep a book of this nature up to date. With this in mind I hope to make this text available also on PC disk. In that form it will be easy to incorporate the necessary changes from year to year, and so keep the text up to date. (N.B. The text is now available on IBM compatible disk, and annual printed Updates are also available from the author.)³

I am indebted to several Secretaries of Assembly Boards for checking parts of the draft text for inaccuracies, and to my wife for reading the whole text, always with an eye to having it “user-friendly”. Particularly in a work of this kind it is to be hoped that the text is free from errors, but, if errors remain, I accept full responsibility for them.

A Gordon McGillivray
Edinburgh 1995

¹ This was a very helpful textbook at the time of the first edition of these materials, but is now rather out of date. (Ed.)

² From 2010 likely to be available only on-line, like this work. (Ed.)

³ With the publication of this 3rd edition, this note should be disregarded. (Ed.)

PREFACE TO SECOND EDITION

A second edition of this book has proved necessary for a number of reasons. For one thing, a book of this nature, if kept up to date with the changes that occur from year to year, quickly becomes messy and hard to read.

Further, with the publication of "*The Constitution and Laws of the Church of Scotland*" by the Very Rev. Dr. James L. Weatherhead as now the principal authoritative work on this subject, the time has come to replace references to the former standard work – "*Practice and Procedure in the Church of Scotland*" by the Rev. Dr. James T. Cox, and this has been done with one exception.

A third compelling reason lies in the fact that all references to the Ministry of Word and Sacrament, the Courts of the Church, and the Administration of the Sacraments have had to be revised as a result of the General Assembly of 2000 producing new Consolidating Acts on these subjects.

The opportunity has also been taken to revise the text completely. Many of the alterations that have been made are relatively minor, but there has been considerable rewriting in respect of the Sections dealing with the Quinquennial Visitation of Congregations, Procedure to the Ministry, Engagement in Extra-Parochial Activities, Overseas Appointments, and the Diaconate.

I have been greatly heartened by the interest shown in the first edition of this work. In producing this second edition I hope that it may prove equally valuable to those who have a need to use it for one reason or another.

Once again it is my intention to produce annual updates in print as well as the whole text annually on IBM compatible disk. These will be available through me each autumn.⁴

A Gordon McGillivray
Edinburgh 2001

⁴ This arrangement has been superseded, and this paragraph should be disregarded. (Ed.)

PREFACE TO THE THIRD EDITION

In 2008, Rev Gordon McGillivray intimated his intention to retire as author of these Church law materials, which he has produced for many years as a loose-leaf volume, and a text-file for the Church's web-site. Many ministers remember being taught their Church law by him as New College students, and many more came to rely on the wisdom and clarity of the materials, always kept up to date each year.

The Legal Questions Committee agreed that staff in the Church offices should maintain these materials, transforming them into a wholly web-based resource. They will occupy a section of the Extranet, and a revised text will replace the existing one each summer, after the General Assembly. Most importantly, the new editors will try to maintain the accessible style of the materials, the hall-mark of Gordon's original work.

These materials are produced without a separate index. Because they are published only through the Church of Scotland web-site, we assume that users will be able to apply a computer's 'find' function to the whole corpus of materials, and so find the exact references they are looking for without relying on any editor's indexing judgments.

These materials refer from time to time to Dr Weatherhead's 'green book'. Alongside that volume, especially for material on the courts and commissions of the Church, is a new volume, *The Legal Systems of Scottish Churches*, produced by the Legal Questions Committee in 2009 and published by Dundee University Press. Because issues of judicial process, appeals, discipline and the like are covered in greater detail there, and are rarely required by the more general reader of these current materials, these issues are not addressed in detail in this 3rd edition of 'McGillivray' - as we hope these materials will continue to be known to their many readers.

Marjory A. MacLean
Depute Clerk
Edinburgh 2009

INTRODUCTION - THE NEED FOR LAW AND ORDER

August 2009

Part of the vows taken by ministers, deacons and elders on ordination, includes the promise "to uphold [the Church's] doctrine, worship, government and discipline" and "to take [one's] due part in the administration of its affairs".

To many in the Church it may seem strange, and even unjustifiable, to place government, discipline and administration on a par with doctrine and worship. Who would wish to dispute the assertion once made by the historian Kenneth Scott Latourette that "always we need again and again to remind ourselves, that the secret of the Church's strength is not organisation . . . age after age it is the men and women who have been captured by Jesus, and have entered a new life through him, who have been the centre of Christian advance, the active agents through whom the faith has gone on"? These words are a necessary warning to all those who ever imagine that the answer to the Church's problems lies in better organisation and administration.

But, if organisation and administration are not to be overrated, neither are they to be decried or counted superfluous. Even in a body such as the Church that so readily acknowledges its dependence on the activity of the Holy Spirit, and where the concept of grace is so prominent, law and order are not discounted, neither are form and structure or organisation and administration. Each has a proper part to play under Christ in the life of his Church. And so the Church of Scotland, as is stated in the Articles Declaratory of its Constitution in Matters Spiritual, lists as marks of the true Kirk not only "the Word purely preached" and "the Sacraments administered according to Christ's ordinance", but also "discipline rightly exercised" (Article VII). The full text of the Articles Declaratory can be found in Appendix A.

The "*Church Without Walls*" Report of 2001 has given voice to a desire to see a greater flexibility in procedure and structure at all levels of the Church's life, and the General Assembly, in adopting this Report, have encouraged experimentation in a number of ways. New ways of doing things are emerging as stated, for example, in the 2003 Report of the Assembly Council on "*Eldership for the Twenty-First Century*". This book, however, is concerned with what is the current legal practice of the Church as set out in the Acts and Regulations of the General Assembly.

CHAPTER ONE - CONSTITUTIONAL FRAMEWORK

August 2009

1. Constitutional Documents

While the Articles Declaratory speak of the Constitution of the Church of Scotland, that Constitution is nowhere to be found in any single document. Given the essential nature of the Church (as has already been noted) this should not come as any surprise. Nevertheless, over the years, and particularly at the more significant dates in her history, a number of documents have appeared which together may be said to incorporate the essential underlying principles. These documents are listed in the Basis and Plan of Union of 1929 (*Weatherhead* pp. 154-174), which led to the reunion of the Church of Scotland and the United Free Church of Scotland, as "leading documents setting forth the constitution, standards, rules and methods of the uniting Church" (ibid p. 156). They include, in addition to the Church of Scotland's Articles Declaratory of 1926, the United Free Church Act of 1906 anent Spiritual Independence necessitated by the quite unacceptable decisions of the House of Lords of 1904 who, taking the view that the Free Church was simply an association for charitable or religious purposes, had supported the property claims of the minority of the Free Church who had not united with the United Presbyterian Church in 1900 to form the United Free Church. Also included, in respect of doctrine, are the Westminster Confession of Faith (1647), the United Presbyterian Church Declaratory Act of 1879, the Free Church Declaratory Acts of 1892 and 1894, and the Church of Scotland Act anent the Formula (1910) (ibid pp. 175-178); in respect of government, the Form of Presbyterian Church Government and of the Ordination of Ministers of 1645; in respect of worship, A Directory for the Public Worship of God (1645); and in respect of discipline, the Form of Process (1707).

2. Westminster Confession of Faith

Among these documents the Westminster Confession of Faith occupies a special place as the Church's "subordinate standard" in matters of doctrine. While still holding by the Westminster Confession as its subordinate standard, the Church, however, as is stated in the Preamble used in connection with services of Ordination, "recognises liberty of opinion on such points of doctrine as do not enter into the substance of the faith", and "claims the right to formulate, interpret or modify its subordinate standards" under certain conditions. An attempt to re-state the Church's attitude to the Westminster Confession failed in 1974 at the final hurdle to gain the approval of the General Assembly, but in 1986 the Assembly were persuaded to dissociate the Church from certain statements in the Confession referring to the Roman Catholic Church (Act V 1986).

3. Other Primary Sources

The documents relating to government, worship and discipline, "as interpreted or modified by Acts of the General Assembly or by consuetude" are to be regarded as "generally regulative and as of validity". The general principles contained in the union documents of the United Secession and Relief Churches (1847), of the Free Church and the Reformed Presbyterian Church (1876), and of the Free Church and the United Presbyterian Church (1900) are "held to be conserved". The Larger and Shorter Catechisms, the Scots Confession of 1560, the First Book of Discipline (1560), the Second Book of Discipline (1578), and the Book of Common Order (1564) are all to be "held in honour".

Such is the constitutional framework of the present Church of Scotland. Though most of the documents at its heart have been part of that constitution for hundreds of years, the constitution itself is not immutable. On the contrary, the Church is always free under the guidance of God's Word and Spirit "to determine and regulate her own

constitution and laws as duty may require". (ibid p. 156). This is done by the General Assembly passing Acts where matters of constitutional importance are concerned, sometimes only after prior consideration by Presbyteries (see Barrier Act in Chapter on The General Assembly and Appendix B). The General Assembly are also the body that approves and adopts Regulations, but these, though just as binding, apply more to the Church's administration than to her constitution.

4. Courts

Government in the Church of Scotland is exercised through a graduated series of courts. At the congregational level there is the Kirk Session. Above the Kirk Session is the Presbytery with authority over all the congregations in an area of common community interest. Above the Presbytery is the General Assembly, the supreme court of the Church, with authority over the whole Church of Scotland in all its parishes in Scotland and over all its outreach both in and beyond Scotland. Until 1992 there was a fourth court between the Presbytery and the General Assembly called the Synod. Synods (which historically predated Presbyteries) incorporated several Presbyteries. Some Presbyteries - Orkney, Shetland, and England - where geographical considerations prevented them from being part of a Synod with neighbouring Presbyteries, were given Synodical powers. Over the years, however, the Synod gradually lost many of its powers and functions either to the General Assembly or to the Presbyteries, until eventually the Church came to accept that the Synod had outlived its usefulness and had to be abandoned. This constituted the first major change in the constitutional framework of the Church of Scotland since 1690 when that framework was recognised by the State as being Presbyterian "exercised through Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies" (Second Declaratory Article). All Church courts (it should be noted) are not courts in name only but are as much courts of the land as is any civil court, having an authority and powers that are every bit as binding within their jurisdiction as those of a civil court are in its.

CHAPTER TWO - CONGREGATIONAL MANAGEMENT

August 2009

The management of a congregation lies primarily in the hands of the Kirk Session, though, depending on the history of the congregation, another body may be involved.

1. Matters Spiritual: the Kirk Session

The affairs of a congregation fall into one or other of two categories - either spiritual or temporal. In every congregation its spiritual affairs are the responsibility of the Kirk Session.

1.1. Membership of Kirk Session

The Kirk Session consists of the minister (or ministers, where there is a shared ministry) inducted to the charge, together with the elders of the congregation. If there is an Associate Minister introduced in terms of Section 30(4) of Act VIII 2003, he or she is a member of the Session. An ordained Assistant and, provided they are members of the congregation, ministers in other recognised appointments and retired ministers could be associated with the Kirk Session in its work. As such they can be invited to attend and participate in Kirk Session meetings, but they may not vote (Act III 2000 Section 33). A Community Minister working in the area, and an Auxiliary Minister assigned to the charge could also be associated with the Kirk Session for the duration of the appointment (Act XIII 2003 Section 16a). A member of the Diaconate working in the parish can be a Corresponding Member of the local Kirk Session with the right to share in its work and speak at its meetings, but with no right to make any motion or to vote. Any other member of the Diaconate may be associated in the work of a Kirk Session, provided he or she is a member of the congregation and is also a member of the Presbytery (Act III 2000 Section 35).

- Appointment of Elders (Act X 1932 as amended)

The Kirk Session itself decides how many elders there should be, and when it is necessary to appoint new elders.

Elders are chosen in one of three ways, but it is important to note that, whichever method is followed, the final decision, both as regards the method to be followed and the persons to be appointed, rests with the Kirk Session. Elders may be chosen (a) by the Kirk Session itself; (b) by a congregational meeting; or (c) by means of signed lists. Care should be taken to ensure that the steps set out in the legislation are all followed, whichever system is used.

In regard to the second method, a congregational meeting is called with two Sundays' notice being given. At the same time intimation is given of the number of elders required. When the meeting takes place, if no more than the required number are nominated, these are all elected subject to the judgment of the Session. If more than the required number are nominated, a vote becomes necessary. This will be either by standing or by voting papers, as the meeting itself shall decide. If voting papers are to be used, the meeting is closed, and arrangements are subsequently made for ballot papers to be printed, distributed to all members of the congregation, and ingathered. Each person has as many votes as the number of elders required.

In regard to the third method, generally a pro forma is supplied so that members of the congregation can write in the names of those they favour up to the required number. When this method is used, it is often thought expedient to call for more

nominations than are really required, so that the Session can offset those who decline to accept office and those whom they themselves judge to be unsuitable. This may not be really necessary, as inevitably more than the required number of names will be forthcoming. On the other hand it may well alter the level of support for those proposed.

Signed lists can also be used in connection with the first method, provided it is made clear that any names proposed are only suggestions and are not nominations for election.

- Eligibility for Election

Any communicant member of the congregation, male or female, is eligible for election as an elder if eighteen years of age or over. The General Assembly of 1991 declared Act XXVIII 1966 anent the Eligibility of Women for the Eldership to be neither compulsive in the sense of insisting that there must be women elders in every congregation nor permissive in the sense of allowing a Kirk Session to restrict its choice to men. A Session must neither appoint someone an elder simply because of their being male nor decline to appoint someone an elder simply because of their being female. Here, as elsewhere, personal theological beliefs, however strongly held, must not be allowed to obstruct the declared mind of the Church. A paid servant of the congregation (eg. Organist, Church Officer) is not on that account debarred from office as an elder.

- Tenure of Office

Elders are ordained for life. Act X 1932 contains the question elders have to answer and the Formula they have to sign at the time of their ordination and admission. The Formula should be written into the Session Minute Book (either at the beginning or the end), and adequate space left for elders' signatures. For the text of the Formula see Appendix (C). Elders do not automatically qualify for membership of the Kirk Session on moving to another congregation. It rests with the Kirk Session of the congregation they have joined to invite them to serve on the Session. Kirk Sessions are advised to enter the names of elders on one or other of two lists, either (1) those who are active and are therefore deemed to be the members of the Kirk Session, or (2) those who are not members of the Session because they have "retired" or are otherwise "inactive" although retaining status. The "active" elders are designated "Trustees" to enable the congregation to comply with the requirements of Charity Law.

Elders are subject in the first instance to the discipline of their Kirk Session in respect of their life, doctrine, and the discharge of their duties, including attendance at Kirk Session meetings. Discipline may lead to removal from office and/or loss of status. Removal from office has the effect of preventing an elder from performing any of the functions of the eldership, even though remaining officially an elder. When the Kirk Session considers that the circumstances merit more severe action, it will deprive the elder concerned of his or her status as an elder. NB An Overture sent down under the Barrier Act in 2009 would if enacted have the effect of removing most disciplinary actions against elders to the Presbytery as court of first instance.

- Assessor Elders

The Presbytery must appoint Assessor Elders whenever there are too few elders in a congregation to form a quorum with the minister or ministers. Those appointed must be members of the Presbytery, but traditionally they may be either ministers or

elders, and this despite the fact that in all other circumstances "a minister shall be eligible for membership of the courts of the Church only as a minister" [Act III 2000 Section 1(5)].

- Responsibility for diligence

There is a responsibility and presumption of diligence in two senses. First, there is an expectation of attendance at Kirk Session meetings, and an elder failing to exercise that diligence for a whole year should be removed from membership of the Kirk Session [Act III 2000 Section 36(a)]

Second, there is a presumption that an elder has been present for any decision-making. Therefore no item of business should be raised again at a future meeting, or appealed against, because the elder was not present at the original debate and wishes to have that original decision reversed to suit his or her own views on the matter.

- Moderator

Meetings are normally chaired by the minister of the charge, designated as 'Moderator'. Where there is a shared ministry, either may preside. When not presiding, the other minister is a full member of the court. A minister of another Church may act as Moderator of a Kirk Session, provided the congregation is part of an ecumenical charge and provided the minister is a recognised member of the team serving that charge [Act VI 2004]. An Associate Minister, although a member of the Session, can preside only if the minister of the charge is unable to be present. With the prior approval of the minister and the Kirk Session another current member of Session, a member of the Diaconate, or a minister associated with the Session may moderate a meeting, and shall have a casting vote only. Only elders who have adequately completed a prescribed course of training may moderate. The Session Clerk may moderate provided a substitute acts as Clerk. If present, but not moderating, the minister has a deliberative vote.

Similar arrangements apply in the foreseen or unforeseen absence of the minister. Authorisation shall be in writing and the business stated unless this is impossible, the facts minuted, and the Presbytery Clerk informed. Any decision taken shall not take effect until agreed in writing by the minister and minuted or ratified at a meeting where the minister is present. These provisions shall also apply where the minister of a charge is acting as an Interim Moderator [Act VI 2004 Section 18].

The Moderator may introduce items of business, is bound by the court's decisions but may dissent, or dissent and complain, from them, cannot make a motion or veto a decision, and has only a casting vote.

- Session Clerk

A Clerk is appointed by the Kirk Session and holds office at the pleasure of the Session. The Clerk is usually an elder, but need not be. On appointment the oath *de fidei administratione* ("I promise to carry out faithfully the duties of Session Clerk") is taken. If the Clerk is absent from any meeting, a temporary appointment has to be made, and the oath administered.

The Clerk is responsible for keeping a record of each meeting in permanent form (the Minutes) and for issuing Extracts from the Minutes as required and instructed. The Minutes may be kept in loose-leaf form, but, if so, they must always be capable of

being bound, and must be bound from time to time, as a permanent record. The Clerk is responsible for attending to all correspondence, and for making whatever arrangements will be in the interests of the congregation. The Moderator acts as Clerk when no appointment can be made, but this practice should last no longer than is absolutely unavoidable.

Kirk Sessions have been instructed to see that their congregational records are properly preserved. In 1985 the General Assembly instructed Kirk Sessions to lodge with the Principal Clerk for transmission to the Scottish Records Office (now the National Archive) for safe-keeping and preservation Records that were over fifty years old. A local depository may be approved by the Keeper of the Records, but only if he is satisfied that it can provide safe custody and good storage facilities, and obtains the permission of the Principal Clerk. Records deposited can be temporarily released to the court whose records they are on application to the Presbytery. If the Presbytery approves the application, it will transmit the application to the Keeper of the Records through the Principal Clerk. In the case of Records held locally the Presbytery Clerk will make application to the local Archivist.

1.2 Meetings of Session

Kirk Session meetings are called as they may be required. Some Sessions meet at regular pre-stated intervals. Timeous notice of meetings must be given to each elder personally or by pulpit intimation. A meeting called to be held at the close of the Service at which initial intimation of the meeting is given would be liable to be challenged.

A meeting can be called for if at least one-third of the elders (not less than five if there are more than nine) request it. In these circumstances the Moderator must comply within ten days, unless he or she judges the business proposed to be incompetent. The Quorum of a meeting is three, of whom the Moderator is one. In the absence of the minister the quorum is three elders.

A Kirk Session has to meet at least once a year, as each year it has to appoint one of its number to represent it in Presbytery. A Kirk Session does not have to meet in connection with the administration of the Sacrament of the Lord's Supper, though the impression is often given that it has to meet on these occasions. It will be required to meet if first communicants are to be admitted to the Lord's Table, but the Sacrament is a ministerial act that does not of itself necessitate the presence of the elders.

As of 2001 Kirk Session meetings shall no longer be presumed to be held in private, but shall normally be held in public unless the Session decide otherwise on any specific matter. Meetings are constituted and closed with prayer, but there could be fuller worship, possibly including Holy Communion.

The Kirk Session requires permission to meet when a higher court is meeting, but only if its meeting is for ordinary business. A Session has standing leave to meet when the General Assembly are meeting, if none of its members is a commissioner. If any member is a commissioner, permission to meet has to be requested. However, when an ordinary meeting of a Presbytery or Kirk Session coincides with a meeting of the Commission of Assembly, as reconstituted in 1997, that Presbytery or Kirk Session can meet, but the priority for attendance is with the Commission, and therefore no business may be transacted in the lower court which affects the interests of any of its members who are attending the Commission. (Act VI 1997 Section 13).

1.3 Functioning of the Kirk Session

Nowhere in the Church's legislation is detailed guidance given to Kirk Sessions to help them to decide how to go about their work. Some set up Committees to deal with different areas of concern. Some co-opt to these committees, either on a regular or on a temporary basis, members of the congregation with appropriate expertise. There is nothing to prevent a Kirk Session acting in this way, and this approach can have much to commend it, particularly in certain circumstances as, for example, where the congregation is very active, or where the Kirk Session attends to both temporal and spiritual affairs, or where it is difficult to add to the strength of the Session. It must always be remembered, however, that, when decisions have to be taken, these rest solely with the elders, as does any confidential or constitutional business.

1.4 Responsibilities of the Kirk Session

The responsibilities of the Kirk Session are detailed in Act III 2000. In general they are: -

- (a) concern for the spiritual welfare not just of the congregation but also of the parish as a whole;
- (b) the provision of Services;
- (c) concern for the organisational life of the congregation.

The Act also lists among the duties of a Kirk Session the need to -

- (d) maintain good order;
- (e) administer discipline;
- (f) judge and determine cases;
- (g) see that Assembly legislation is observed;

and further lays on the Kirk Session the need to –

- (h) judge the fitness of those who desire to receive the Sacraments;
- (i) maintain both a Baptismal Roll and a Communion Roll;
- (j) appoint the Organist, the Church Officer, and one of its number to represent it in Presbytery.

- spiritual care – parish

The responsibilities of the Kirk Session to its **parish** have become increasingly difficult to discharge. The third of the Articles Declaratory may state that "as a National Church [the Church of Scotland] acknowledges its distinctive call and duty to bring the ordinances of religion to the people in every parish in Scotland through a territorial ministry", but, as Dr. Andrew Herron observed in his *"A Guide to Congregational Affairs"*, "in practice to-day the Session has little opportunity of extending this care beyond the actual members of the congregation and their families. The break-up of the traditional parish, the growth of denominations, the increase of those not interested even nominally in the church, have all played a part in making it difficult for the Session to exercise that degree of spiritual oversight that traditionally and constitutionally is its duty." (pp. 18-19) Ministers continue, however, to be approached by parishioners for their services particularly for funerals, weddings, and baptisms.

- spiritual care - congregation

The spiritual oversight of the **congregation** is largely exercised by the congregation being divided into districts and each district being allocated to an elder. Where there is a large Kirk Session, some elders who have other particular duties may not have

responsibility for a district. Elders who have districts allocated to them are expected to do much more than deliver Communion Cards to the homes of members. They are expected to take a personal interest in each family in their district. They should encourage active participation in and support for the life of the congregation, and they should take a special interest in the young and the housebound. If their district is within the parish, they should enquire about neighbours who have no church connection, and they should encourage members to befriend such people and invite them into the fellowship of the congregation. They should show particular concern for those whose commitment appears to be lessening, and they should seek to ensure that members who are about to move to another address receive their certificates of transference *before* they leave and leave behind their new address so that notice of removal may be sent where possible to the appropriate parish.

- supervision and discipline

Discipline also forms part of the responsibilities of a Kirk Session for the spiritual welfare of its congregation and parish. As Kirk Session records of bygone years amply testify, Kirk Sessions used to spend much of their time dealing with cases of immorality. Present practice is for such matters to be dealt with if possible "out of court" in the sense that it is usually left to the minister, sometimes accompanied by an elder, to meet with the person or persons concerned with a view to achieving some kind of remedy rather than to administer some form of punishment. Where the circumstances warrant more formal action, care must be taken to ensure that disciplinary procedures are scrupulously observed.

- maintaining rolls

The keeping of a Communion Roll is part of the Kirk Session's spiritual oversight of the congregation. The Communion Roll contains the names of all who have been accepted as communicant members of a congregation (a) by Profession of Faith in that congregation, (b) by Transference of membership from another congregation in the Church of Scotland, or (c) by Special Resolution of the Kirk Session. The minister's name should appear on the Communion Roll even though he or she is answerable to the Presbytery and not to the Kirk Session. The Roll, if kept in loose-leaf form, should be permanently bound at intervals not exceeding 10 years [Act VI 2000 Section 5].

The acceptance of new members of a congregation is a matter for the Kirk Session, not the minister. Although the minister has responsibility for giving instruction to intending first communicants, and although it may be to the minister that a Certificate of Transference is handed, it is for the Kirk Session "to judge of the fitness of those who desire to receive the sacraments" [Act III 2000 Section 37(2)] and to resolve to add names to the Communion Roll. Persons who are communicant members of another denomination, or who are submitting a Certificate of Transference which is more than one year old and is therefore invalid, may have their names added to the Communion Roll only by Special Resolution of the Session [Act VI 2000 Section 7].

The Kirk Session is required to revise and attest the Communion Roll annually as of 31st. December. Intimation to this effect should be given to the congregation on the two preceding Sundays. When the Kirk Session meets to revise the Roll "the question of adherence to vows of Church membership shall be raised in the case of any person who during the year under review, without obvious and sufficient reason, has not, in the opinion of the Kirk Session, shown sufficient interest or taken an adequate share in the worship, mission and service of the Church" [Act VI 2000 Section 9]. It is here that the elder's knowledge of the families in his or her district is

of paramount importance. Before any further action is taken the matter has to be taken up personally with the member concerned. Hopefully this will have the effect of bringing about an improvement in the level of commitment, but, if not, the Kirk Session may remove the name of any such person *at the next annual revision* (Section 10). Though there is no requirement to do so, it would seem desirable for the Session to advise the person concerned of what can happen at the next annual revision of the Roll, and in the interval again try to improve the situation. Any name removed from the Communion Roll must be recorded in the Kirk Session Minutes (Section 10), and the name should be placed on the Supplementary Roll which congregations are also obliged to keep, but only if the person concerned is resident within the parish [Section 12(1)]. Persons whose names are on the Supplementary Roll may not participate or vote in congregational meetings. Nor can they be elected as office-bearers. However, they may still take Communion and, if they wish to take part in the election of a minister, they may apply to the Kirk Session to have their name placed on the Electoral Register [Sections 12(2) and (3)]. Many still believe that, provided they attend Communion at least once in a three year period, their name cannot be removed from the Communion Roll. This has not been the case since 1977, and since 1991 the obligation on a Kirk Session to keep a record of Communion attendance has been removed.

The General Assembly of 1995 approved a recommendation by the Board of Practice and Procedure that "only one Roll be kept, but in such a way that names can be coded or annotated so as to identify members, adherents, children attending communion, children not attending communion, persons on the supplementary roll, and any other categories a Kirk Session may choose" (Reports 1995, p. 3).

- Communion Cards

Kirk Sessions have never been required to use Communion Cards. Many, however, have used them to help in the recording of Communion attendance. Where they continue to be used, they serve now as a reminder and an invitation rather than for record purposes or as evidence of entitlement to communicate.

- Certificates Of Transference

Certificates of Transference should be issued to members if possible before they leave for their new place of residence, unless they specifically ask to be allowed to retain their membership of the congregation and, equally important, "the minister and Kirk Session are prepared to accept pastoral responsibility for them" [Act VI 2000 Section 11]. For the avoidance of doubt, there is no longer any system of 'Disjunction Certificates'; and Kirk Sessions should exercise great care and compassion in a situation where an individual simply wishes to terminate their association with the Church of Scotland, especially for reasons of principle or following a dispute.

- Adherents

In every congregation, in addition to the communicant members, there may also be those who are referred to as adherents. Sometimes the term is applied to those who have only a very slight connection with the congregation without any commitment. The generally accepted definition of an adherent is rather "a person who has a live connection with a congregation in that he or she is involved in its life and worship, but who has, for various reasons, declined to make a public profession of faith and sit at the Lord's Table" (Reports 1994, p. 396). In some congregations, notably in the

north-west of Scotland and in the Western Isles, adherents may greatly outnumber the communicant members. Few or many, they are as much under the care and oversight of the Kirk Session as are the communicant members. Nonetheless, with two exceptions, adherents may not take any part in congregational meetings and may not hold any office in the Church. However, if they are “formally recognised by the Kirk Session as adherents of the congregation” [Act VII 2003 Section 13(2)], they can speak and vote in regard to any Basis of Adjustment affecting the congregation, and if, after making written application and being at least eighteen years of age, they have been admitted to the Electoral Register, they may subsequently take part in the business of all congregational meetings held in connection with a vacancy [Act VIII 2003 Section 13(1)] and sign a Call [Act VIII 2003 Section 25(3)].

- responsibilities relating to parish staff

The Kirk Session may have employees, including organist, church officer/beadle, and certain kinds of members of ministries teams (those not employed by the Ministries Council). Where there is a separate financial court, some elements of the employers' responsibility will be the responsibility of that body; but the Kirk Session remains the primary responsible body because of its overarching remit in relation to worship, mission, and education – which are normally the areas of work of such employees. The Kirk Session should bear in mind that, as employees rather than inducted ministers, their staff look to conventional secular employment law for their legal rights, and should be treated accordingly in every respect.

- education and mission

The Kirk Session has ultimate responsibility for the establishment and the control of every branch of a congregation's activity. All organisations within a congregation are under the supervision of the Kirk Session, even those that have their own central or national organisational framework like the Boys' Brigade and the Guild. The Kirk Session has a particular responsibility for the Sunday School or Junior Church because of its concern for the care of the young. The minister, however, is head of the Sunday School or Junior Church even where, as is generally the case, someone else acts as principal leader.. The appointment of Sunday School or Junior Church staff (who if possible should be members of the Church) should be with the concurrence of the Kirk Session as well as of the minister. No organisation can be sanctioned as congregational without first receiving the approval of the Kirk Session. Kirk Sessions have been instructed to adopt and implement a Code of Good Practice in order to provide "a safe environment for children and young people engaged in the activities and organisations sponsored by their congregations", and "to review the provision being made for the training of all volunteers operating under their authority" [Reports 1997, pp. 35/1ff and Order of Proceedings p. 110 ff] (see also Act V 2005).

- safeguarding

Since the introduction of the Code of Good Practice regarding the protection of Children and Young People in the Church of Scotland in 1997, Kirk Sessions have been responsible for implementing many of the instructions of the Church's General Assemblies and ensuring that their congregations adhere to them. The Handbook for Child Protection in the Church of Scotland gives a summary of most of these instructions. The list below also includes more recent deliverances:-

- ◆ Implement the Code of Good Practice.
- ◆ Appoint a Safeguarding Co-ordinator.

- ◆ Register the name and contact details of their Safeguarding Co-ordinator with the Safeguarding Office.
 - ◆ Ensure that their Safeguarding Co-ordinator attends appropriate training when appointed to their position including training in processes relating to Disclosure Scotland Checks to allow them to be authorised signatories for such checks.
 - ◆ Comply with the Church of Scotland policies and systems relating to Disclosure Checks.
 - ◆ Adhere to the Church of Scotland's safe recruitment procedures.
 - ◆ Ensure that congregations use the general title 'Church Activities in the Church of Scotland' on each volunteer's Disclosure application form.
 - ◆ Maintain an accurate record of all persons working in 'Church Activities' under the jurisdiction of Kirk Sessions.
 - ◆ Ensure that those working with children, both voluntary and paid, appreciate the necessity of undertaking awareness raising training by personnel accredited by the Safeguarding Office.
 - ◆ Implement the *Disciplinary Code* for the purposes of the Protection of Children (Scotland) Act 2003
 - ◆ Establish a written policy for the management of Safeguarding complaints and note that a template is available from the Safeguarding Office.
 - ◆ Ensure that Safeguarding procedures are followed and records maintained to the satisfaction of the Presbytery (per the instruction to Presbyteries at the General Assemblies of 1998 and 2002)
 - ◆ Maintain a record and retain evidence that every individual working with children and young people is familiar with the factfile.
 - ◆ Liaise with those responsible for lets and hire of church premises to non Church of Scotland groups, to attempt to ensure compliance (where applicable) with the requirements of the *Protection of Children (Scotland) Act 2003* where the accommodation is being let for a purpose involving work with children and young people.
 - ◆ Adopt and use the Safeguarding Panel Model to manage confidential safeguarding matters.
 - ◆ Adopt and use the '*including those who pose a risk*' policy for the safe management of sex offenders in congregations.
 - ◆ Ensure that all perpetrators of sexual abuse who seek to worship in congregations of the Church of Scotland are advised that they must agree to be supported and monitored by the safeguarding panel within the congregation.
 - ◆ To seek the involvement of the appropriate Pastoral Adviser from the Ministries Council in the support of all who are involved in the local Safeguarding Panel charged with the support and monitoring of the sex offender.
- determination of hours of worship, sacraments

While the responsibility for the conduct of public worship rests with the minister of the charge, though always subject to the control and direction of the Presbytery [Act II 2000 Section 19(1)], it rests with the Kirk Session "to determine the hours of public worship and the times of dispensing the Lord's Supper" [Act III 2000 Section 37(10)]. It is of interest to note that, preceding this statement, there now appear the words "subject to determination by Presbytery for purposes of parish readjustment". These words have been incorporated to take account of the fact that, especially where congregations are to be linked, the Presbytery will write into the appropriate Basis

what the hours of worship in each congregation shall be. Clearly, whatever hours are set for public worship, the concurrence of the minister is necessary, although this is no longer specifically stated. As regards the celebration of the Sacrament of Baptism, no specific directions are given as to when this Sacrament should be dispensed. Generally speaking, this is left to the minister to decide.

In 1992 the General Assembly passed an Act permitting a Kirk Session to admit baptised children to the Lord's Table without requiring of them a public profession of faith. Before doing so, however, the Kirk Session is to be satisfied that the children to be admitted to communion "are being nurtured within the life and worship of the Church, and love the Lord, and respond in faith to the invitation 'Take, eat'". The names of such children are not to be added to the Communion Roll until they make public profession of their faith. (see Act V 2000, Section 15), but where a Composite Roll is kept (see final paragraph of the Section on the 'Communion Roll' p. 10) their names may appear in the category of 'children attending Communion'.

Over the years there has been a steady easing of restrictions on the celebration of the Sacrament of the Lord's Supper other than in church. Originally prohibited, then permitted "only exceptionally", this Sacrament may now be administered "privately in church or elsewhere at the discretion of the minister" [Act V 2000 Section 16(2)]. Moreover, since 1985 it has also been specifically stated [Section 14] that those with learning difficulties are not debarred from Communion because of any inability to receive instruction in the Faith.

- Benevolent Funds

In some congregations certain funds may require to be administered by the Kirk Session. Generally these will be Benevolent Funds often for the poor of the parish. Even where there is a separate Financial Board the Kirk Session has a legitimate right of control over these funds, and can insist on exercising that right. In some cases the Kirk Session may hand these funds over to be administered by the Financial Board, but even so responsibility for these funds remains with the Session. Care must always be taken to ensure that, where a fund is for the poor of the parish, it is to be distributed to persons in the parish. They may be also members of the congregation, but they need not be, and members of the congregation would not qualify to benefit from such a fund, however needy they might be, if they lived outwith the parish.

2. Matters Temporal: The Financial Board

In the management of a congregation attention has to be paid not only to what are termed "spiritual matters" but also to "temporal affairs". Largely depending on the history of the congregation its temporal affairs will be the responsibility of one of the following four bodies - Kirk Session, Congregational Board, Deacons' Court, or Committee of Management.

Whatever the body charged with the temporal affairs of a congregation, its responsibilities are the same - primarily to look after the congregation's finances and property. Recent legislation has imposed uniformity of practice irrespective of a congregation's constitution. Every congregation is equally bound by the Act anent the Care of Ecclesiastical Properties of 2007 (Act XII), and by the Act anent Church Finance [Act V 1989 amended by Act X 2002 sanctioning website appeals] and the Regulations anent Congregational Finance adopted by the General Assembly of 2008 [Reg. 2].

In recent years, Financial Boards have become conscious of their accountability in terms of Scottish charity law, and these secular rules may often have a bigger impact on a congregation than the legislation and regulations of church law. The implications are dealt with more fully in the Chapters on Finance and Property, but members of all governing bodies mentioned in this Chapter should be highly aware of their responsibilities as charity trustees. There have been two developments which highlight this dual legal responsibility. First, in 2009 the Church adopted a system of charity trustee indemnity insurance, which is compulsory for all congregations. Second, the Delegation of Assembly (the body which issues congregational constitutions) now strongly recommends that congregations managed by Deacons' Courts or Committees of Management (see below) should give serious consideration to moving to one of the more common forms of constitution (ideally the Unitary Constitution) to facilitate adherence of the requirements of secular law.

Every Financial Board is required to -

- (a) Maintain and fully insure the properties of the congregation;
- (b) Prepare and distribute to members of the congregation an annual budget;
- (c) Encourage a level of giving to meet budget requirements;
- (d) Fix the level of salaries of employees of the congregation, and prepare contracts of employment;
- (e) Pay the salaries of employees of the congregation and other expenses of the congregation;
- (f) Meet the Ministries and Mission contributions;
- (g) Raise additional funds, if need be, subject to the approval of the Presbytery.

Where the funds are to pay for extraordinary repairs or improvements, the approval of the Presbytery, the Planning and Development Committee of the Ministries Council and of the General Trustees is also required;

- (h) Ensure that congregational funds are used exclusively for Church of Scotland purposes unless specially raised or donated for other purposes;
- (i) Accept Loans only if repayment can be assured;
- (j) Terminate contracts of employment at the direction of the Kirk Session;
- (k) Keep the Congregational Accounts in the form that complies with the Regulations anent Congregational Finance (sections 1 A and B).
- (l) Ensure that the Accounts of the congregation and its organisations for which it is responsible are independently examined or audited as required by the Regulations anent Congregational Finance (section 1 C) and are approved by the trustees.
- (m) Arrange for the Stated Annual Meeting or other meeting of the congregation at which the accounts and budget, after approval by the Kirk Session, are presented;
- (n) Submit the independently examined / audited accounts, after approval by the Financial Board, to the Presbytery for examination and attestation.

2.1 Kirk Session

The Kirk Session is the body responsible for the temporal affairs of a congregation, where that congregation has always been part of the Church of Scotland or is a congregation which has adopted the Unitary Constitution (see below). The same procedures are to be followed in dealing with both spiritual and temporal matters.

2.2 Congregational Board

Many congregations now operate under the Model Deed of Constitution, which means that the body administering their temporal affairs is a Congregational Board.

The Model Deed is now in its fourth version. The most recent revision in 1994 [Act II 1994] took account of changes in the keeping and auditing of the accounts of a congregation made necessary in order for the Church of Scotland and its congregations to be formally "designated" under the charity law then in force, and thus to be exempted from controls imposed at that time on charities in general. To safeguard against the need for frequent revision, detailed references to the Accounts and Accounting Procedure have been omitted from the Model Deed itself, and instead these matters have been incorporated in separate Regulations anent Congregational Finance [Reg. 2, 2007as amended].

- Membership of Congregational Board

Those who constitute the membership of a Congregational Board are the inducted minister or ministers of the charge, any Associate minister, ordained assistant minister, or member of the Diaconate appointed to serve with the congregation, all the elders, and a number of communicant members eighteen years of age or over elected by the congregation. The number of elected members shall be decided by the congregation, but shall not exceed the number of elders. Where a congregation has fewer than six elders, the Presbytery can authorise the appointment of up to six elected members.

To ensure that the Congregational Board does not become too large and unwieldy a body, and to achieve a closer balance between elected and non-elected members, by resolution of the congregation the size of the Board can be reduced by limiting the number of elders to serve on the Board. This decision has to be taken at a congregational meeting by not less than two-thirds of those present. Where the Communion Roll does not exceed 200, the number of elders should be not less than 5; when the Roll is between 200 and 400, the number of elders should be not less than 8; and when the Roll exceeds 400, the number of elders should be not less than 12. When a decision is taken to reduce the size of the Board, the Kirk Session decides which elders shall serve on the Board, and the order in which they shall retire, and the Session shall fill any casual vacancy that may arise among the serving elders.

When the number of elders on the Board has been reduced by resolution of the congregation, the number of elected members shall not exceed the reduced number of elders. If need be, elected members must resign to make this possible. The decision to reduce the number of elders on the Board can be rescinded by the congregation, provided that there is a two-thirds majority vote in favour at a congregational meeting. In the event of a casual vacancy occurring among the elected members of the Board, the Board itself may appoint a duly qualified person to fill the vacancy. Subject to confirmation by the congregation at the next Stated Annual Meeting, that person shall complete the period of service of the person whose place he or she has filled.

- Election of Congregational Board and Term of Office

The election of the Board takes place at a meeting of the congregation held each year after two Sundays' notice and not later than 31st. March. In the first year of operation the meeting is called by the Kirk Session, but thereafter it is called by the Board itself. The minister or Interim Moderator shall preside, whom failing a member of Presbytery duly authorised by the minister, whom failing someone elected by the meeting.

One-third of the Board retire annually, but are severally eligible for re-election. The elected members of the Board and the elders serving on the Board are under the discipline, not of the Board, but of the Kirk Session.

Board members along with the “active” elders are also designated “Trustees” to meet the requirements of Charity Law (see above).

- Meetings of Congregational Board

As with the Kirk Session, meetings of the Board are held as may be required. In some congregations the Board, like the Session, meets at regular pre-stated intervals. The Quorum varies depending on the size of the Board. If the Board does not exceed 9, the quorum is 3; if the Board numbers between 10 and 20, the quorum is 5; and the quorum is 7 where the Board exceeds 20.

- Chairman of Congregational Board

The minister of the charge or Interim Moderator is Chairman *ex officio*. Where there is more than one minister of the charge, each shall be chairman at successive meetings in rotation, subject to any other agreement they may have.

The minister or ministers of the charge may decline to accept office. Where one of the ministers declines, the other may nonetheless act as Chairman. Where the minister or ministers all decline, the Board shall elect one of its own number to be Chairman for the year. Not until after the Board has been reconstituted following the next Annual Congregational Meeting can the minister or ministers resume the Chairmanship. If the Chairman be absent from any meeting, the Board shall elect one of its own number to be Chairman for that meeting. The Chairman has a casting vote only.

- Officials

The Board requires to appoint a Clerk and a Treasurer. Neither office needs to be held by a member of the Board. Both offices can be held by the same person. Someone acting as Clerk or as Clerk and Treasurer needs to be a member of the congregation. Someone acting only as Treasurer is not required to be a member of the congregation. The period of office for both the Clerk and the Treasurer is a maximum of three years, renewable for periods not exceeding a maximum of three years at a time.

The Clerk shall keep minutes of all Board meetings and also of the Stated Annual Meeting of the congregation, and of any other meetings of the congregation held for temporal purposes (Act XVIII 1932).

The Treasurer shall keep one or more Bank Accounts in name of the congregation. All cheques drawn on the accounts are to be signed by the Treasurer and any one of those authorised by the Board to sign with the Treasurer, though the Board can authorise cheques to be signed by the Treasurer alone if they are under a certain figure determined by the Board.

2.3 Deacons' Court

If a congregation has a Deacons' Court, this will be a congregation which once was part of the United Free Church of Scotland and prior to that of the Free Church of Scotland. While the Free Church considered it to be in a congregation's best

interests to have two separate bodies, and not just one, to attend to the congregation's spiritual and temporal affairs, it regarded each as equally important. This explains why originally all deacons were ordained, and why they were given some of the powers and responsibilities of a Kirk Session (e.g. concern for the poor, and the appointment of certain officials).

- Membership

Membership of the Deacons' Court consists of the minister of the charge or Interim Moderator, all the elders, and a number of communicant members of the congregation eighteen years of age or over elected by the congregation to be Deacons.

- Election of Deacons

The Kirk Session decides how many Deacons there shall be and when an election is necessary. Originally, deacons were elected for life and ordained to office. This method of election is still possible, but, where there are still Deacons' Courts, the method generally followed now is for those elected to serve for a three-year period and not to be ordained but committed in prayer during public worship. Whichever method is adopted, the deacons are appointed in the same way as are the elected members of a Congregational Board, i.e. at either the Stated Annual Meeting or at a meeting of the congregation specifically called for this purpose. If a congregation with a Deacons' Court subsequently adopts the Model Constitution, deacons elected for life, unless they choose otherwise, automatically become members of the Congregational Board for life, and the number of elected members of the Board is correspondingly reduced as a result. It is for the congregation to decide which method of election shall be adopted.

The discipline of deacons rests with the Kirk Session, not with the Deacons' Court, and it is to the Kirk Session, and not to the Deacons' Court, that a deacon wishing to resign must tender his or her resignation.

- Officials

The minister of the congregation or the Interim Moderator acts as Chairman if present. In their absence the Court appoints one of its number as Chairman for that meeting. The Chairman may introduce business and speak to it, and he or she has a casting but no deliberative vote.

The Court appoints a Clerk, who on appointment should take the oath *de fidei*. If the Clerk is absent from any meeting, a Clerk *pro tempore* shall be appointed, the oath administered, and the appointment minuted. The Clerk shall keep minutes of all meetings of the Court, and also of the Annual Stated Meeting of the congregation, and of any other meetings of the congregation held for temporal purposes.

The Court also appoints a Congregational Treasurer or Treasurers with responsibility for keeping Bank Accounts for all funds belonging to the congregation other than any funds of the Kirk Session.

- Meetings

The Deacons' Court may meet on a regular basis or as business requires. Meetings are called by authority of the minister, but if there is a vacancy in the charge, it falls to

the Deacons' Court Clerk, and not to the Interim Moderator, to call meetings. Any three members of the Court can requisition the holding of a meeting. Meetings are opened and closed with prayer, and this fact must be recorded. Meetings are usually private, but they may be made open to the congregation if there is good reason for this to be done. The Quorum is any three members.

- Doorkeepers, Organist, Church Officer

A feature of former Free Church congregations is the practice of having Doorkeepers or others to assist the convenience of worshippers. Where this practice is still to be found, it should be noted that it falls to the Deacons' Court to make these appointments as well as to decide the remuneration and terms of service. However, the appointment and terms of service of an Organist and a Church Officer lie with the Kirk Session. The Deacons' Court has responsibility only for deciding and paying their salaries. "In the conduct of public worship the Precentor or Organist shall be under the direction and control of the minister" [Act XVI 1931, Section 4]. A recommended Salary Scale for Organists can be found at www.scotorgan.org.

2.4 Committee of Management

If a congregation has a Committee of Management, this will be a congregation which was once part of the United Presbyterian Church. Each United Presbyterian congregation has its own "constitution" or more accurately "rules". While these constitutions have much in common with one another, there is sufficient variation among them to have made the General Assembly resolve in 1970 that, where a minister is being nominated for one of these congregations, he or she must be furnished with a copy of that congregation's constitution. This is because the minister will almost certainly find himself or herself excluded from the Committee of Management, and therefore would be otherwise in the dark as to how the congregation's temporal affairs are managed. [see Act VIII 2003 Section 20(1)].

- Membership

The Committee of Management comprises a definite number of managers. The number is determined by the congregation, and is usually between six and fifteen. Those elected must be communicant members of the congregation. There is no minimum age requirement. Women are eligible, but only by decision of the congregation. The minister and the elders are eligible. Sometimes elders are appointed, but very rarely if ever is the minister appointed, as the managers see their interests as quite separate from those of the Kirk Session. In some congregations it is not permissible for someone to be both an elder and a manager at the same time.

- Election of Managers

The managers are elected usually at the Annual Congregational Meeting, but in some congregations the election is by means of voting papers issued and returned before the meeting. One-third of the managers retire annually by rotation, and are usually eligible for re-election. A congregational meeting has to be held to fill any vacancy that may arise. The person appointed only completes the unexpired period of service.

- Officials

These are appointed either by the congregation itself or by the managers as empowered by the congregation. The officials consist of a Preses, a Clerk, and a Treasurer.

The Preses acts as Chairman of the Committee, may introduce and speak to business, and has both a deliberative and a casting vote. In the absence of the Preses from any meeting the managers elect one of their number to preside. The Preses, not the minister, takes the chair at the Annual Congregational Meeting and at any special meetings called for temporal purposes.

The Clerk is responsible for keeping in a permanent record the minutes of all meetings of the managers and also of all meetings of the congregation held for temporal purposes.

The Treasurer is responsible for banking the monies of the congregation, making necessary payments, keeping the accounts, and seeing to their audit.

- Meetings

The Committee of Management meets at least quarterly. Meetings are called by the Preses or in his or her absence by the Clerk. A meeting can be called for by at least one-third of the managers. A Quorum is three or not less than one-third of the total number of managers whichever is the greater.

- Doorkeepers, Organist, Church Officer

The same conditions of appointment, payment, terms of service, dismissal or resignation apply in congregations having a Committee of Management as in those having a Deacons' Court (see above).

- Relationship to Minister and Session

Because a Committee of Management can be quite separate from a Kirk Session and the minister of the congregation, an understanding of the relationship between all three is important in the interests of congregational harmony. "The constitutional right of the Kirk Session to watch over all the interests of the congregation, and to interpose whenever, in its opinion, the welfare of the congregation calls on it to do so, by convening meetings for any purpose connected with congregational affairs, or in any other competent manner, is, in every congregational constitution, expressly reserved, and cannot be revoked by any resolution of the congregation." (Cox, p. 39) The use of church buildings constitutes the likeliest area of conflict. This matter is dealt with specifically in the section following.

2.5 The Financial Board: Other Considerations

The remaining matters dealt with in this Chapter apply to all congregations whatever their particular form of constitution.

2.6 Responsibilities of the Financial Board (see chapters on Property and Finance)

2.7 Inter-relation of Kirk Session, Financial Board and Congregation in Property Matters

Another potentially contentious issue concerns the respective interests of the congregation, the Kirk Session, and the Financial Board where work on property is

concerned. The ordinary day-to-day care and maintenance of church property and its funding is the sole responsibility of the Financial Board. However, where extraordinary property expenditure is envisaged, the congregation and the Kirk Session are also involved. The Kirk Session is involved because of its being the governing body in the congregation, and it will also have an interest if what is proposed impinges in any way on its particular responsibility for things spiritual in the life of the congregation; and the congregation is involved because it is from the congregation that the money necessary to carry out the work will have to be found. In such a situation the ultimate decision rests with the Kirk Session, but in reaching its decision it must ascertain and take account of the views of the Financial Board and the congregation - the Financial Board with regard to technical property considerations and the financial implications of the project, and the congregation with regard to the merits of the project as a whole and how it might be funded. Once all these views have been expressed, the Kirk Session will then take its decision, the Financial Board will set about implementing that decision by taking estimates and putting in place a fund-raising package, and encourage the congregation to give the project its full financial backing.

2.8 Congregational Meetings

The Kirk Session is responsible for calling meetings of the congregation "for ecclesiastical purposes". These deal with all matters other than those having to do with the ordinary finances of the congregation and the care and maintenance of its properties (which are meetings called "for temporal purposes"). For example, meetings in connection with the appointment of a Nominating Committee or the appointment of elders fall into this category as well as those to consider major items of property expenditure as, for example, substantial alterations to church, hall, manse or organ. A meeting called to establish a Congregational Board in terms of the Model Deed of Constitution [Act II 1994] is also a meeting "for ecclesiastical purposes" and is therefore called by the Kirk Session. Generally, two Sundays' notice should be given. Only those present who have the right to vote may vote at congregational meetings irrespective of the business under consideration. Church practice makes no provision for voting by proxy or for any form of plebiscite or referendum (*Weatherhead* p. 85). It is generally accepted that abstentions are not recorded.

The rules that apply to the chairing of Kirk Session meetings shall apply to the chairing of congregational meetings chaired by the minister [Act VI 2004 Section 17].

- Annual Congregational Meeting

The Stated Annual Meeting of the congregation, or equivalent congregational meeting in the case of congregations not having the Model Deed of Constitution, shall be held not later than 31st. March, and shall be presided over by the Minister or Interim Moderator, whom failing by a member of Presbytery specially authorised by the Moderator or Interim Moderator. Where the congregation has a Committee of Management, it is the Preses who presides. In the absence of the Minister, Interim Moderator or Preses, the meeting may elect its own Chairman. One Sunday's intimation is sufficient notice of the Stated Annual Meeting. Other meetings called for temporal purposes require two Sundays' notice [Act XVIII 1932 Sections 4 – 9].

At a Stated Annual Meeting the only *decisions* that those present may take relate to the appointment, where appropriate, of office-bearers, i.e. members of the Congregational Board, Deacons' Court, or Committee of Management.

The annual Accounts and Budget used to be submitted for approval at the Stated Annual Meeting, but the Regulations anent Congregational Finance [Reg. 2, 2007 as amended] now require them to be approved by the Kirk Session as Trustees to comply with the Charity Accounting (Scotland) Regulations (2002). Once audited or independently examined depending on the gross income of the congregation, the Accounts and Budget shall be presented to the congregation at the Stated Annual Meeting or its equivalent. Comments on this or any other matter from the members who are present are valid, as are recommendations for the consideration of the office-bearers as appropriate. After the Accounts have been presented to the congregation, they shall be submitted to the Presbytery for examination and attestation.

Changing the Constitution

A congregation may choose to change its constitution. It may be required to do so at a time of union with another congregation, but it is free to do so at any time. It may choose to adopt the Model Constitution (see pp. 18-20), or it may adopt the Unitary Constitution (introduced in 2003). The latter constitution allows a congregation to function with a Kirk Session and no separate Financial Board. Under the Unitary Constitution the Kirk Session to discharge its duties may constitute committees with specific remits. Any member of the congregation may be appointed to serve on any of these committees. Non-members of the congregation may be appointed to serve as corresponding members with powers to speak, but not to vote or propose motions.

Act XIX 1964 as amended by Act V 2003 states the procedure to be followed by a congregation wishing to change its constitution. The Kirk Session will give two Sundays' notice of a meeting of the congregation to consider the possible change. If the congregation agrees, the Presbytery is to be informed. If the Presbytery concurs, it will send Extract Minutes of the Kirk Session, the congregational meeting and the Presbytery to the Principal Clerk who will arrange for the Delegation of Assembly to issue the official Deed of Constitution.

Congregations where the Kirk Session is the sole body dealing with matters both spiritual and temporal, if they so wish, may adopt the Unitary Constitution, in which case the Kirk Session shall apply direct to the Delegation of Assembly for issue of such a Deed, first informing the Presbytery of its intention, but not requiring its approval.

A deacon, ordained or commissioned for life, shall without election become either a member of the Congregational Board (Model Constitution) or a member of the Finance or Property Committee (Unitary Constitution) for life or for as long as he or she chooses, if he or she so wishes.

3. Charity Law

Each Congregation within the Church of Scotland is a charity in its own right but, in turn, is a component element of "the Church of Scotland", which has been recognised as being a designated religious charity. In recognition of the fact that the Church has internal authorities which "exercise supervisory and disciplinary functions in respect of the component elements of the charity", the standard compliance regime for charities as set out in the Charities and Trustee Investment (Scotland) Act 2005 is, in some extents, modified so far as congregations are concerned. Even with these modifications, however, office-bearers in Congregations are charity trustees and have significant responsibilities, particularly in regard to finance and accounting requirements. Further information about this can be found in the various

charity law circulars downloadable from the extranet section of the Church of Scotland website, see <http://www.churchofscotland.org.uk/extranet/xsupportservices/xsscentralervices.htm#law>

As well as circulars giving an overview on charity law and the duties of Congregational office-bearers as Charity Trustees, there are specific circulars on topics such as the Charities References in Documents Regulations and the legislative provisions in regard to remunerating charity trustees and their close relatives for services.

The Offerings Donations and Gifts Circulars covers the use of funds deriving from ordinary offerings and special collections.

Further guidance on charity law and the duties of Charity Trustees can be found on the OSCR website (www.oscr.org.uk).

The Law Department is always happy to deal with specific queries arising.

CHAPTER THREE - THE PRESBYTERY

Only one body - the Presbytery - now stands between the Kirk Session at the local, congregational level and the General Assembly at the national level in the administrative structure of the Church of Scotland. This means that the Church of Scotland has returned to the three-tier system of rule and order it embraced at the time of the Reformation. The earliest framework introduced by the Reformers made provision for "congregational (Kirk Session), provincial (Synod), and national (General Assembly) assemblies". At the same time provision was also made - at least in the larger towns, for the "Weekly Exercise", a meeting at which ministers and people would come together to read and interpret the Scriptures. As the Church grew, and the number of parishes increased, the need also grew for the burden on the provincial assemblies to be eased. This was done by bringing the Weekly Exercises into the structure of rule and order under the name of Presbyteries. This fourfold structure - General Assembly, Synod, Presbytery, and Kirk Session - was established by the General Assembly in 1581 and accepted by Parliament in 1592. The following hundred years, however, witnessed bitter conflict between the rival claims of Church, Crown and State in the political sphere and between Episcopalianism and Presbyterianism in particular in the life of the Church. But with the accession to the throne in 1688 of William of Orange Parliament in 1690 reaffirmed a Presbyterian form of government for the Church of Scotland. This was further guaranteed "for all time" by an Act of Security in the Treaty of Union of Scotland and England of 1707. The Synod was abolished in 1992, creating the current, three-fold court structure.

1. Membership

1.1 Number and Size

Currently there are 43 Presbyteries in Scotland. In addition there is a Presbytery of England, a Presbytery of Europe, and a Presbytery of Jerusalem. The size of a Presbytery is determined not just by the number of congregations within its bounds but also by the number of individuals - ministers, elders, and members of the Diaconate - who qualify for membership for one reason or another. Special provision is made for the functioning of the Presbytery of Europe (Act V 2002) and the Presbytery of Jerusalem [Act VIII 1979 amended by Act IV 2003].

1.2 Membership

Act III 2000 as amended indicates those who qualify for membership of a Presbytery:-

- (a) Minister(s) of a charge, including those inducted on Reviewable Tenure;
- (b) Associate Ministers; Community Ministers; Ordained Assistant Ministers; Hospital, Prison or Industrial Chaplains;
- (c) Ministers appointed by a committee of the church to an Overseas post; Chaplains to HM Forces;
- (d) Auxiliary Ministers during an appointment;
- (e) Ministers in appointments under the jurisdiction of the Church and under the direction and control of one of its Courts or Committees may be members of the Presbytery of the bounds or of the Presbytery of congregational membership or of the Presbytery of residence as they may choose;
- (f) Other Church of Scotland ministers, if holding a Practising Certificate (see below), may apply for membership. The Presbytery, however, shall be satisfied that in being granted membership the minister concerned will fulfil the responsibilities of membership including the acceptance of Presbytery appointments;

- (g) Representative Elders, one from each congregation, though a Kirk Session may, with the permission of the Presbytery, appoint an elder from another congregation;
- (h) Freely Elected Elders, one for every non-parish minister on the Roll with in addition possibly up to the equivalent of one third of the number of congregations in the Presbytery;
- (i) Deacons (Member of the Diaconate) only if serving under a Department, Committee or Court of the Church, or if appointed as a Hospital, Workplace or Prison Chaplain recognised by the Ministries Council;
- (j) Deacons (Members of the Diaconate) holding a Diaconal Certificate (see Practising Certificates below) may be members of the Presbytery issuing the Certificate. They must also satisfy the Presbytery that they will fulfil the responsibilities of membership including the acceptance of Presbytery appointments;

N.B. Those already holding a seat in Presbytery shall not be disqualified if no longer meeting the above criteria.

1.3 Practising and Diaconal Certificates

Ministers (by Act II 2000), Auxiliary Ministers (by Act XII 2003) and Deacons (by Act III 2000), who are not in a charge or an appointment, require to have a Practising or Diaconal Certificate to be able to exercise any of the functions of their ministry as authorised, viz. the administration of the Sacraments, the conduct of public worship, and the solemnisation of marriage. They also have to have a Practising or Diaconal Certificate to have membership of Presbytery if they do not have membership in virtue of their appointment. They and they alone must apply for membership if they wish to have a seat [Act II 2000 Sections 5 – 15]. These Certificates are valid for one year.

Each year the Presbytery Clerk shall enquire whether renewal of the Certificate is desired, and the minister concerned is entitled to be heard at the meeting of Presbytery at which the Presbytery reaches its decision on whether a Certificate should be issued or withheld. This decision shall be taken whether or not application has been made.

If the decision is to withhold, the Presbytery must state its reasons and record them in its minutes. A minister from whom the Practising Certificate has been withheld may not be associated in the practical work of a Kirk Session.

On moving to the bounds of another Presbytery a minister shall exhibit his or her Certificate to the Clerk of that Presbytery, and that Presbytery shall become responsible for the future issuing of such a Certificate.

If a Practising Certificate has lapsed, the minister concerned may apply at any time to the Presbytery of residence or, if outwith the bounds of any Presbytery, to the Presbytery that first issued the Certificate.

A minister who is neither a member of a Presbytery nor holds a Practising Certificate nonetheless remains under the jurisdiction of the Presbytery of the bounds.

A Practising Certificate must be issued to a minister who on ordination does not become a member of a Presbytery.

By Act III 2000 Section 26(4) a certificate of status and good standing is available to members of the Diaconate who, having retired on the grounds of neither age nor ill health, cease to be members of a Presbytery.

An Auxiliary Minister, on ceasing to serve in a designated appointment, is also entitled to apply for a Practising Certificate [Act XII 2003 Section 15(d)].

1.4 Register of Ministers: Certificate of Status

The Ministries Council shall maintain a Register of Ministers eligible for a Practising Certificate. Where a minister, though eligible, does not hold a Practising Certificate, his or her name shall be retained on the Register provided he or she confirms to the Council their continuing membership of the Church of Scotland, and that they have not been judicially deprived of status. Failure to respond will result in loss of status as a minister of the Church of Scotland, except in circumstances deemed exceptional by the Council. Continued registration may be regarded by the minister as a Certificate of Status only [Act II 2000 Sections 16 and 17].

1.5 Resignation of Membership

By Act I 2006 anent membership of Presbytery ministers no longer retain membership of Presbytery on retirement. Also by this Act provision for ministers to resign their seat in Presbytery if they so wish has been withdrawn, other than in the case of those who hitherto have qualified for a seat in Presbytery on retirement. On the other hand, ministers who in the past have chosen to resign their seat can recover membership in accordance with the provisions of the latest legislation [Reports 2006, p. 22/2 para. 4.2.1]. Similar provision applies to the Diaconate.

A representative elder wishing to resign from membership of Presbytery will intimate his or her resignation to their Kirk Session, and the Session will make a new appointment.

A freely elected elder wishing to resign from membership of the Presbytery will intimate his or her resignation to the Presbytery, and the Presbytery may make a new appointment at any subsequent meeting.

If a vacancy is caused by an elder's death, disqualification, or departure to another congregation, the Kirk Session or the Presbytery, as the case may be, shall make another appointment.

1.6 Corresponding Membership

A Presbytery may also elect Corresponding Members who have the right to attend all meetings of the court and to speak on any matter that is before the court, but do not have the right to vote [Act III 2000, Section 29]. No precise indication is given as to those who should be granted this type of membership. A Presbytery is free to grant such membership to any as it sees fit.

1.7 Presbytery Assessors

Where a Presbytery finds that it has an insufficient number of ministers to fulfil its functions, it can request the Legal Questions Committee to nominate one or more ministers to act as temporary assessors. A minister so appointed shall have membership of that Presbytery during the period of appointment. His or her involvement in Presbytery shall normally extend only to the discharge of those duties which have necessitated their appointment [Act V 2001]. It is also possible [under Act VI 2002] for a Presbytery (without granting membership) to appoint a voting member of an immediately neighbouring Presbytery to serve on a *special* committee

or commission, but only if dealing with Visits to Congregations, Appraisal and Adjustment, Congregations in an Unsatisfactory State, or the Discipline of Ministers, etc. or the Acts anent Bullying and Discrimination [Acts IV and V 2007].

2. Meetings

2.1 Meetings belong to the following types:

- for ordinary business: This is the most common form of Presbytery meeting. It is at such meetings that nearly all of a Presbytery's business is transacted. There is usually a predetermined pattern to the frequency of these meetings. Even so, before any such meeting ends a resolution must be passed indicating that the Presbytery stands adjourned, and appointing the date, time and place of the next meeting for ordinary business, and the fact must be minuted and intimated. If this is not done, the Presbytery's powers and functions will lapse. As it is a somewhat complicated process to revive these powers and functions, care should be taken to ensure that the Presbytery stands adjourned between its meetings for ordinary business.
- *in hunc effectum*: These are meetings to deal only with a particular item or items of business which are known in advance as requiring to be dealt with before the next meeting for ordinary business. When the decision to hold such a meeting is taken and the date, time and place are intimated, the business will also be stated. No other business may be conducted at such meetings, the one exception being that elders' commissions may be dealt with at any meeting of Presbytery of whatever kind. Special Services (e.g. of ordination, induction, union or linking, dedication of a church) are the most common occasions for meetings of this kind.
- *pro re nata*: These also are meetings held only to deal with particular business, but in this case the business will have arisen unexpectedly in the interval between meetings for ordinary business and will require to be dealt with before the next ordinary meeting takes place. One example of a meeting *pro re nata* is where it is necessary for a Presbytery to meet to appoint an Interim Moderator in consequence of the death of a parish minister. Again the only other business that could be attended to at such a meeting would be business to do with elders' commissions. A meeting *pro re nata* is called not by the Clerk but by the Moderator, whose action in calling it the Presbytery must approve to enable it to deal with the business indicated.
- called by a superior court: Listed here for completeness, this type is in practice encountered at Kirk Session level. Used most commonly in the context of superintendence visits (both routine and non-routine), a Kirk Session meeting may be called on the authority of the Presbytery, and often will be chaired by the representative of that court, depending on the nature of the business to be transacted.
- Meeting in Conference or as a Committee

A Presbytery may resolve to meet either in Conference or as a Committee. When a Presbytery meets in conference, any resolutions framed or decisions taken are not recorded in the minutes of the court. On the other hand, when the Presbytery meets as a committee, resolutions framed or decisions adopted are reported to the Presbytery when it resumes meeting as a court and are usually adopted without further discussion.

A meeting of Presbytery of whatever kind must not take place if the General Assembly are in session, unless by special permission of the Assembly.

2.2 Quorum

The Quorum of a Presbytery meeting is three, only one of whom may be an elder [Act III 2000 Section 30]. Meetings are public, but Presbyteries are required to meet in private, for example, when operating the Act anent Congregations in an Unsatisfactory State (Act I 1988). It would probably be considered to be desirable to meet in private when dealing with matters of discipline and superintendence, but Presbyteries ought to conduct their business in private as seldom as possible.

3. Officials

Every Presbytery requires to have a Moderator and a Clerk.

3.1 Moderator

The Presbytery elects its Moderator on the recommendation of the Business or other Committee of Presbytery. The Presbytery is free to elect any member [Act III 2000 Section 3]. The Moderator holds office for one year at least, and is eligible for re-election. In the absence of the Moderator a previous Moderator presides. If no former Moderator is present, in the spirit of past practice a senior member present should constitute the meeting, and thereafter the Presbytery, if it sees fit, may appoint any other member to be Moderator *pro tempore*. However, the Presbytery must appoint one of its ministerial members to lead in a service of ordination, if the Moderator is not a minister (Act III 1999).

The Moderator's responsibilities are to preside at meetings, to cause good order to be kept, to rule on points of order, to refuse to accept motions that are incompetent, irrelevant or offensive, to sign with the Clerk all minutes and also any papers being transmitted to the General Assembly. The Moderator may not move or second a motion, and has a casting vote only. If that vote is not exercised, the matter under debate remains unresolved and may be raised again. The Moderator rules on points of order. Any such ruling becomes the judgment of the court, and so is open to appeal. The Moderator must vacate the chair when any matter affecting his or her personal or congregational interest is under consideration.

3.2 Clerk

The Presbytery appoints one or more persons to act as Clerk. Those chosen need not be members of the court, but almost certainly will be. On appointment the oath *de fidei administratione* is taken. The appointment is at the pleasure of the court. Some Presbyteries set an age-limit and others a time-limit on the appointment. A salary and expenses are paid to Clerks by the court. In the absence of the Clerk a temporary appointment is made and minuted, and the oath administered.

The Clerk's responsibilities are to notify members of meetings, to keep the minutes of meetings, along with the Moderator to sign the minutes when approved, to act as custodian of the Presbytery Records, and to issue Extracts of Minutes when necessary. The Clerk must step down when any matter affecting his or her personal interests are involved, and when the congregation of which he or she is a member is "at the bar", but the Clerk is otherwise free to speak on any matter and to move or second a motion from his or her place. In practice the Clerk frequently exercises a pastoral role, is regularly consulted on legal and procedural matters, and plays a key part in maintaining a Presbytery's efficiency and harmony.

3.3 Treasurer

In some Presbyteries the Clerk also acts as Presbytery Treasurer, but in most Presbyteries this office is held by someone qualified in this field who may or may not be a member of the court. The oath *de fideli* should always be administered when an appointment is made. A salary and expenses are payable.

3.4 Officer

The Presbytery usually appoints an officer whose duties are to attend its meetings and execute its orders. The officer assists the Clerk in the arrangements for meetings and special services. The oath *de fideli* should be administered when an appointment is made. A salary and expenses are payable.

3.5 Precentor

To assist the Moderator in the devotions when constituting Presbytery meetings a Precentor - someone able to lead unaccompanied singing - is usually appointed by the Presbytery, but the devotions may be conducted in some other form

4. Conduct of Meetings

Every meeting of Presbytery is officially "constituted with prayer" by the Moderator. Devotions at ordinary meetings usually include praise and scripture readings and possibly a brief homily. The Sacrament of the Lord's Supper will generally be celebrated at one of the ordinary meetings in the course of the year. Presbytery meetings are closed with the Moderator pronouncing the benediction.

After the meeting has been constituted, arrangements are made for the sederunt (attendance) to be recorded, and then the ROLL must be "made up" (brought up to date). Tribute will be paid to deceased members; elders' commissions resigned will be noted; commissions submitted will be sustained; and new members will be welcomed.

The minutes of all meetings since the previous meeting for ordinary business will be submitted, corrected if necessary, and approved as corrected. The only point at issue in approving the minutes is whether or not the minute accurately reflects what actually happened at the time. Any corrections need to be initialled, only by the Clerk if they are typographical or clerical, but by the Moderator and the Clerk if they are more substantial. The minutes are then to be signed by both the Moderator and the Clerk. Substantial corrections should also be recorded in full in the minute of the meeting taking place. No part of a minute may be deleted unless authorised by a superior court.

The Order of Business will be submitted. It may include Orders of the Day at fixed times to deal with specific items. When the hour for an Order of the Day is reached, the court may continue the business on which it is then engaged for up to a further 15 minutes. If that item of business is still not finished by then, it must be adjourned and taken up again after the Order of the Day has been completed.

Any one wishing any item to be added to the Agenda must seek a place for it when the Order of Business is under consideration. The only matter that should legitimately come up under "Any Other [Competent] Business" is something that has unexpectedly arisen in the course of the Presbytery meeting after the Order of Business has been approved.

The business will then be dealt with in the order agreed. Speakers should address the Chair and preface their remarks simply with the word "Moderator!" They should

speak only once on any item and they must observe the appropriate time-limits (see p. 53). Time-limits do not apply when the Presbytery is considering an Overture under the Barrier Act, when the court is acting judicially, or when it agrees that the subject matter is of exceptional importance and merits unrestricted debate.

When a matter is taken in private, all non-members and the general public must leave. Members of the Press may remain, but they must not record in any way any of the proceedings taken in private. The Minute of any matter taken in private is also taken in private.

A draft minute should be framed, read out, adjusted if need be, and approved if an item of business has been particularly complicated or contentious.

A member will sometimes try to get the Presbytery to review a decision taken on some issue or another at an earlier meeting. It may be safe (and sensible) to do so if no action has as yet been taken on the matter at issue and if no other party is involved. However, it has become generally accepted that this should not happen unless a new factor has arisen since the decision was originally made or a sufficient period of time has elapsed that it is reasonable to return to the matter without giving the appearance of revisiting the same decision. In some courts the rule of thumb is that a sufficient period is six months, but there are circumstances in which a much shorter or much longer period would seem more appropriate. If the original decision involved the interests of a third party, who would be prejudiced by the proposed revisiting of that decision, and if their consent is not forthcoming, the Presbytery would have to petition the General Assembly to set aside its earlier decision, and all parties having an interest would be heard.

Before the Benediction is pronounced and the Presbytery stands adjourned intimation must be made of the next meeting for ordinary business and of any special meetings to be held in the period prior to that date.

5. Business

The business of a Presbytery is very comprehensive and wide-ranging. To facilitate it in its business a Presbytery appoints a number of Committees. Committees report to Presbytery through their Convener who in committee has, if need be, only a casting vote. Committees are encouraged to keep minutes of their proceedings.

Within its bounds a Presbytery is required to:-

- (a) determine the number of charges;
- (b) set parish boundaries;
- (c) dispose of Calls to ministers and from congregations in terms of Act VIII 2003 as amended;
- (d) consider levels of parish assistance;
- (e) accept demissions and resignations;
- (f) record tributes to deceased members;
- (g) deal with elders' commissions from Kirk Sessions;
- (h) admit to membership of the Presbytery, and [in terms of Act IX 2002] to the ministry of the Church of Scotland;
- (i) nominate and supervise candidates for the ministry, the auxiliary ministry, the Diaconate, and the Readership, and encourage recruitment;
- (j) arrange and conduct Services of Ordination, Induction, Setting Apart, Union or Linking, and Dedication;
- (k) determine Ministries and Mission Contributions from congregations in conjunction with the Council of Assembly, through the Stewardship and Finance Department;

- (l) arrange and carry out Visits to congregations in terms of Act II 1984 as amended;
- (m) arrange for the Quinquennial Inspection of church property;
- (n) process applications for work on property;
- (o) examine Congregational Records and Accounts;
- (p) attest Presbytery Records and report diligence to the Legal Questions Committee after its first ordinary meeting each year;
- (q) arrange for Presbytery Accounts to be audited and/or independently examined in keeping with Regs III 2007 as amended;
- (r) appoint Commissioners to the General Assembly and to the Commission of Assembly;
- (s) consider Assembly Remits;
- (t) consider matters of public interest, locally, nationally and internationally;
- (u) deal with Petitions and Overtures;
- (v) discharge its disciplinary functions in regard to ministers, deacons and congregations;
- (vv) exercise pastoral care for its ministers, deacons and other full-time servants of the Church;
- (w) act as a Court of Appeal;
- (x) ensure that the laws and accepted practices of the Church of Scotland are observed generally, and in particular in the conduct of public worship and the celebration of the Sacraments.
- (y) monitor the Code of Good Practice anent the Protection of Children and Young People as implemented by Kirk Sessions;
- (z) prepare 10-year-plus plans for the number of charges and their staffing within the bounds, in terms of Act VII 2003

Most of these functions are dealt with more fully elsewhere in keeping with their subject matter.

5.1 Routine Superintendence: Presbytery Visits to Congregations

The superintendence of congregations by the local Presbytery is part of the general supervisory powers that Presbyteries have. This superintendence is carried out principally by a scheme of visitation once in every five years [Act II 1984 as amended]. The object of the visitation is to give encouragement, support and advice, to note encouraging developments, to inquire into the working relationships among office-bearers and between office-bearers and the minister(s), to draw attention to anything that is not in accord with Church practice, and to bring about a reconciliation where there is division, discord or discontent.

The visit is carried out by a team of (usually) at least four persons, the majority being members of the Presbytery, but the total number and composition of the visiting team will depend on the size, location and strength of the congregation being visited. The whole team should receive such training as the Presbytery deems appropriate. Intimation of the visit is to be given to the congregation on two Sundays prior to its taking place. The visitors shall hold separate meetings with the minister, the Kirk Session (without the presence of the minister if the Presbytery's representative deems this desirable), and the Financial Board. Each meeting is chaired by one of the visitors. The prescribed schedule, issued in advance to the minister and the Session Clerk, should be completed and in the hands of the visitors before the visit takes place. The visitors should also receive a copy of the report of the previous visit, and all relevant statistical and financial information. The visitors may ask questions other than those on the schedule. Though inspection of property is no part of such visits, questions of policy in regard to the relevance and usefulness of buildings may also be asked. The visitors may visit any of the organisations of the congregation, the minister being entitled to be present. As part of the visit one or more of the visitors should conduct public worship with the minister present, or a congregational meeting may be held during the week to hear what the visitors have to say.

The visitors shall submit their report to the Presbytery's Superintendence Committee. That committee shall send a copy of the report to the Kirk Session before considering it. Having considered the report, the committee shall submit the whole report with its findings to the Presbytery. Parties from the congregation, including the minister, may claim to be heard by the Committee or the Presbytery when the report is being considered.

Not more than six months after communicating the Presbytery's findings on the report, the Superintendence Committee shall enquire of the Kirk Session what action has been taken in regard to any instructions or recommendations that have been made, and the Committee shall report back to the Presbytery.

If the Presbytery is not satisfied with the state of a congregation, its Superintendence Committee shall try to remedy the situation assisted, if requested, by assessors from neighbouring Presbyteries appointed by the Legal Questions Committee. If thereafter the Presbytery remains dissatisfied, it shall either proceed under Act I 1988 (Congregations in an Unsatisfactory State) (see below), or it shall submit a report to the General Assembly through the Committee.

There is no need for a Presbytery to take these Reports in private.

5.2 Superintendence: Congregations in an Unsatisfactory State

Sadly a situation can arise when the state of a congregation can so deteriorate that the Presbytery has to take action. This it does under the Act anent Congregations in an Unsatisfactory State (Act I 1988 as amended). The Act allows the Presbytery to investigate the situation and if, as a result, it takes the view that "the unsatisfactory state will continue unless the pastoral tie between the minister and the congregation is dissolved", it can dissolve the pastoral tie and declare the charge vacant. Before instituting proceedings under this Act the Presbytery must be satisfied that "all reasonable steps of a pastoral nature have been taken to remedy the situation, but have failed". If it then resolves to institute proceedings (a decision which, if taken, is final), it sets up a Committee of Inquiry. None of the members of the Committee should have been involved in the earlier investigation. The Committee's inquiry should be impartial and thorough. The Committee has power to interview, to examine documents, and to hold meetings of the congregation.

The Presbytery must ask the Legal Questions Committee to appoint an Assessor to give guidance on procedure [Section 15(b)].

All procedure under this Act shall be in private, and shall be recorded in a Record Apart. Only the judgment of the Presbytery shall be recorded in the Presbytery's Minute Book [Section 19].

If at any time while the Committee is making its inquiries the situation appears to have been remedied, in consultation with the Presbytery's Superintendence Committee, a report shall be submitted to the Presbytery. In the light of the report the Presbytery may either depart from the matter and discharge the Committee of Inquiry, or continue the matter and call for another report within a year [Section 7]. This Act shall not be invoked, or shall be departed from, if there appear to be grounds for instituting disciplinary proceedings under Act III 2001.

Unless the Committee of Inquiry is discharged, the Committee will continue its work. When its inquiry has been completed, the Committee shall prepare the FIRST PART of a Report which shall comprise matters of fact. On the basis of this Report the

Committee shall consider whether the congregation is in an unsatisfactory state and, if so, whether this will continue unless the pastoral tie is dissolved. Its conclusions on these two issues with its reasons and any recommendation as to action to be taken by the Presbytery, with an indication of the vote in reaching these conclusions and recommendations, form the SECOND PART of the Committee's Report [Section 9].

The whole Report is then lodged with the Presbytery Clerk. The Presbytery Clerk shall send by recorded delivery a copy of the Report and of the Act to the minister concerned, giving him or her twenty-eight days in which to lodge any Response. The Response shall indicate if the minister agrees or disagrees with each statement made by the Committee of Inquiry. The response shall state the minister's own contentions on those statements with which he or she disagrees, and it may also contain other information or comment [Section 10].

If no response is forthcoming within twenty-eight days, the Presbytery Clerk shall inform the minister in writing that, unless a response is forthcoming within a further fourteen days or a request for further time to prepare a response is received, the minister shall be deemed to concur with the Committee of Inquiry's Statement of Facts. Concurrence will also be assumed if there is still no response even after a further specified extension of time has been granted [Section 11].

When a response has been received or the time-limit for receipt of a response has expired, a meeting of the Presbytery *pro re nata* shall be called, the Report and Response (if any) shall be circulated to members, and the minister shall be cited to appear [Section 12]. The Presbytery may contribute to the cost of preparing copies of and circulating the minister's Response. If the Presbytery and the minister cannot agree on this matter, the matter shall be decided by the Legal Questions Committee [Section 15(c)].

At the Presbytery meeting only the minister (or counsel or solicitor who may be representing the minister) and the person presenting the Committee of Inquiry's Report shall be deemed to be parties at the bar [Section 13]. The Presbytery shall hear evidence and shall adjudicate on those matters of fact which are in dispute. The parties, after submitting evidence, shall be subject to cross-examination and to questions by the Presbytery. When both parties have made final submissions, they shall be removed, and the Presbytery shall make its findings on the issues in dispute. These together with a statement of the facts not in dispute shall be minuted and shall constitute the Basis of Fact for further proceedings [Section 14 (ii)(c)]. Only if the minister has submitted a response can there be a dispute in respect of any matter of fact [Section 14(iv)].

Once the Basis of Fact has been minuted, the parties shall be informed of its terms. The Presbytery shall then hear both parties. Thereafter parties shall be removed and motions shall be called for, firstly, as to whether or not the congregation is in an unsatisfactory state. If the Presbytery resolves that the congregation is not in an unsatisfactory state, that will close the case. If the Presbytery resolves that the congregation is in an unsatisfactory state, the Presbytery must then consider whether or not the unsatisfactory state will continue unless the pastoral tie is dissolved [Section 14(vi)].

If the judgment of the Presbytery is that the unsatisfactory state will continue unless the pastoral tie is dissolved, the Presbytery must immediately declare the pastoral tie to be dissolved and the charge to be vacant as from a specified date. If that is not

the judgment of the Presbytery, the Presbytery must say so and must agree to an alternative remedy or an alternative course of action [Section 14(vii)].

It should be noted that the Presbytery may decide that the state of the congregation is unsatisfactory and that the pastoral tie must be dissolved even if the Committee of Inquiry has come to no such conclusion or recommendation [Section 14(viii)].

If the Presbytery decides to dissolve the pastoral tie, it shall immediately suspend the minister from that office, but without prejudice to continuation of stipend and occupancy of the manse [Section 16].

The final judgment of the Presbytery shall be minuted, and the minutes adjusted and approved before the conclusion of the meeting [Section 14(ix)].

The procedure, Basis of Fact, and final judgment of the Presbytery are subject to Appeal or Dissent and Complaint to the Judicial Commission (Section 17) in accordance with the procedure as in Act III 2001 Section 19. If there is an Appeal or Dissent and Complaint, the Presbytery Clerk shall issue the Record Apart to all parties and to the Principal Clerk. (see also Chapter on The General Assembly).

A minister whose pastoral tie has been dissolved is entitled to a Practising Certificate in terms of Act II 2000 Sections 8 and 16, as he or she is not under discipline.

Once the dissolution of the pastoral tie has taken effect, the Presbytery shall advise the Ministries Council of its decision. The Department shall arrange for a minister from another Presbytery to give pastoral advice to the minister concerned [Section 18], and the General Assembly's Committee on Ministry Support is empowered to grant any such minister a maintenance allowance [Act I 1988 Section 17].

6. Discipline of Ministers and Others [Act III 2001]

Whenever an allegation has been made that a minister, deacon, licentiate or graduate candidate, who is subject to the discipline of the Presbytery, has committed a disciplinary offence, the provisions of Act III 2001 (as amended) apply. Such a situation is always very grave in the life of the Presbytery, and should be approached only by following the steps of the Act scrupulously. It is not appropriate to present these steps in paraphrased form in materials like these, because no actions should be taken by anyone who is not consulting the primary legislation and taking expert advice. Anyone finding themselves involved in the implementation of the Act is strongly recommended, therefore, to read the treatment of Discipline by the Solicitor of the Church in the volume *The Legal Systems of Scottish Churches*.

7. Superintendence: Attesting Congregational Accounts

The Presbytery is responsible for examining and attesting Congregational Accounts each year. It is required to appoint a committee to undertake this task and report its findings to Presbytery. This committee must include at least one person, by co-option if necessary, who is a member of one of the supervisory bodies listed in the Regulations anent Congregational Finance section 1 (C) (3) (a). Where Congregational Accounts do not comply with the Regulations anent Congregational Finance, the committee is expected to provide such advice and assistance as is necessary for the Accounts to be amended and accord with the Regulations. The Presbytery is required to submit an annual report on the examination and attestation of Congregational Accounts to the Stewardship and Finance Department.

8. Presbytery as Court of Review

The Presbytery is the Court of Review where decisions have been taken at congregational level. A member of Session, dissatisfied with any of its judgments, may dissent and complain. He or she may also petition the Presbytery if disapproving (a) any action taken by the minister or the Session, (b) any decision taken at a congregational meeting, or (c) any alleged irregularity in operating the Constitution of the Financial Board. Any individual or group dissatisfied with an adverse judgment of the Kirk Session, and able to demonstrate an interest, may appeal to the Presbytery.

CHAPTER FOUR - THE GENERAL ASSEMBLY

August 2009

The supreme court in the Church of Scotland is the General Assembly.

First time commissioners will be invited to attend an induction session (normally the night before the opening ceremony), and a DVD has also been produced explaining further how the Assembly works. This chapter deals briefly with the main points, but it is expected that those attending the Assembly will take up those further opportunities to prepare for their participation.

1. Membership

Voting members of the General Assembly are called Commissioners. The Assembly includes ministers, ex-Moderators of the Assembly (Act III 2000 Section 6(c) and (d)), an equal number of elders, members of the Diaconate, the officials of the Assembly *ex officiis* including the Moderator and the Moderator of the preceding Assembly (Section 6(a) and (b)), Corresponding Members, Delegates and Visitors from other Churches and Youth Representatives. The basis of calculation to determine the number of commissioners from each Presbytery is as follows (Sections 2 - 4):-

For Ministers: one in every four, or part of four, of the sum of (a) the total number of charges and (b) the total number of ministers in other appointments. Retired ministers, though not included in the basic calculation, are nonetheless eligible to receive any ministerial commission. A commission cannot be given to a minister who is not a member of the Presbytery when the commission is given. A minister translated to another charge after having been commissioned does not forfeit the commission.

For the Diaconate: one in every four, or part of four, on the Roll of the Presbytery. A commission cannot be held by a member of the Diaconate who is not a member of the appointing Presbytery. A Presbytery need not take up its full quota for the Diaconate each year.

For Elders: an equal number to the number of commissions for ministers. In addition an elder requires to be commissioned for every ex-Moderator (minister) who will be attending the Assembly. Elders are not required to be appointed to equal the number of members of the Diaconate who have been commissioned. Elders so commissioned must be members of Kirk Sessions or of New Charge Core Groups within the bounds of the Presbytery commissioning them.

Each Overseas Charge may commission its minister and one of its elders once every four years [Act VI 2001 Section 5].

Most Presbyteries operate some kind of rota system to help in their choice of commissioners, but the General Assembly have affirmed that the election of commissioners by Presbyteries should be "by free election and not according to a rota" (1944, Session 11).

A Presbytery unable to meet in full its quota of commissioners must advise the Clerks of Assembly of the reasons.

Those appointed, being commissioners and not representatives, are free to vote as they choose.

The Quorum is thirty-one, of whom at least sixteen must be ministers.

Delegates may speak on any matter, except when the Assembly are acting judicially, but they may not vote. Visitors may neither speak nor vote.

Representatives and Secretaries of some Councils and Committees as specified in Assembly Standing Orders, and the holders of certain senior appointments in the Church are given corresponding membership. They may speak only on any matter affecting the interest of their Council or Committee, but they may not vote or make a motion. Presbytery Youth Representatives (one from each Presbytery) (with a live congregational involvement) and ten members of and appointed by the National Youth Assembly, all aged 18 – 25, may speak and move motions but only during debates on Reports and Overtures. They do not have a vote on any matter [S.O. 34].

2. Officials

2.1 Moderator

The Moderator, who is nominated in the preceding October by a Committee appointed by the General Assembly for the purpose [Reg 1, 1999 as amended], is elected by the Assembly in May immediately after the Assembly have been constituted by the retiring Moderator. A minister, deacon, or elder may be Moderator [Act III 2000 Section 7(a)].

The Moderator's responsibilities during the Assembly are essentially the same as those that apply in the lower courts. The Moderator has a casting vote only. If the Moderator wishes to leave the chair, a former Moderator will deputise, usually by prior arrangement.

During the remainder of the year of office the Moderator carries out a variety of duties in the name of the Church, including visits to a number of Presbyteries and to the work of the Church overseas. The Moderator will represent the Church on historic and national occasions. The Moderator can speak for the Church where the General Assembly have already expressed the Church's mind. Otherwise anything said is no more than a personal opinion, even though, as is recommended, the Moderator has had prior consultation with the Convener of the appropriate Council or Committee [Reg. 5(2), 1962 as amended].

The Moderator has two Chaplains who assist with the Moderator's programme. They are not commissioners *ex officiis*, but may hold commissions from their Presbytery.

1.1 Clerks

The General Assembly have a Principal Clerk and a Depute Clerk. Between them they are responsible for keeping a record of the proceedings, and for advising the Moderator and the Assembly on matters of Church law and procedure. The Clerks may speak on any subject that is before the court. They may also move or second a motion, and do so, as may be necessary, in connection with the presentation of Reports. The Principal Clerk must be a minister; the Depute Clerk, though normally a minister, need not be.

1.2 Procurator

The Procurator, who is a Queen's Counsel, is appointed by the General Assembly to advise the Assembly in regard to civil law. Not infrequently the Procurator's opinion will be sought on matters of ecclesiastical law and practice, but strictly speaking such

questions should be addressed to the Clerks and not to the Procurator. It is for the Moderator, and not for commissioners, to invite the Procurator's opinion should it be desired.

Between Assemblies the Procurator serves as a member of the Legal Questions Committee and as a General Trustee, conducts litigation as Senior Counsel on behalf of the Church, and gives opinions when requested to do so by the Principal Clerk on behalf of individuals or congregations. Act III 2000 Section 8 and Reports 2006 p. 6.4.1. set out the procedure to be followed in the event of a vacancy arising between meetings of the General Assembly.

1.3 Business Convener and Vice-Convener

The Order of Business for the first two days of every Assembly and provisionally for the remainder of the Assembly is prepared by the Assembly Arrangements Committee, but early in the proceedings of every Assembly a Business Committee is appointed to finalise the Order of Business and generally to supervise the business of the Assembly, including the procedures for vote taking. The Convener and Vice-Convener of the Business Committee give guidance to the Assembly on matters of procedure and order.

1.4 Solicitor of the Church

The Solicitor of the Church, as head of the Law Department with responsibility for the legal work of the Church in matters of civil law, will always be present when property issues are under consideration and at other times as may seem desirable. The Solicitor, and all the aforementioned officials, are members of the Assembly *ex officiis*.

1.5 Precentor, Assembly Officer

The General Assembly appoint a Precentor to lead the praise each day, and also an Assembly Officer whose responsibilities include seeing to the seating arrangements in the Hall, attending on the Moderator, assisting the Clerks, and taking charge of the various ceremonial processions.

2. Business

The business of the General Assembly divides itself into three quite distinct categories - administration, legislation, and litigation, corresponding to the conventional division of any complete legal system into the legislative, the executive and the judicial.

Overtures, which are the method whereby business is brought before a Court by another Church Court, or members of the Court itself, may seek to raise a matter in any of the categories listed above. The procedure surrounding the use of the Overture is discussed in elsewhere in these materials.

2.1 Administration

To cope with the wide range of activity in which the Church of Scotland is nowadays engaged a system of Councils and Committees has been created, each with its own area of concern and responsibility. Much of the time of any General Assembly is taken up with consideration of the Annual Reports of these different bodies. Basically the Reports indicate what has been done in the preceding year, and what it is hoped the Assembly will authorise for the year ahead. Each Report is prefaced by a series of Deliverances which in the final form in which they are passed will constitute the Assembly's verdict on that particular Report. Some things may be "noted", some may be "approved", some may be "recommended", some may be

"urged", some may be "authorised", some may be "enjoined", and some may be passed into Acts or Regulations.

In dealing with a Report the first thing that the Assembly have to do is to decide whether or not to "receive" it. It is hard to conceive of a Report not being received. This is not to say that there may not be objections to it at some point or another. But a Report is the work of a Committee, not of the Assembly, and therefore as such cannot be amended in any way by the Assembly. If some part of the Report is judged to be inaccurate or offensive, then the course of action open to the Assembly is to receive the Report "with the exception of [the offending Section]". Alternatively, the Assembly may send the Report back to the Committee for further consideration.

2.2 Legislation

Legislation is another aspect of the work of a General Assembly as the supreme court of the Church. The legislation may be in the form of Acts, Regulations, or Injunctions.

2.2.1 Acts including Barrier Act

Some Acts are passed after having been considered by Presbyteries under the Barrier Act (see Appendix B). The Barrier Act dates from 1697 and, as its name suggests, it was introduced to guard against an Assembly agreeing to legislation too quickly without adequate consideration being given to whatever is being proposed. When there is a proposal to effect some change in the Church's doctrine, worship, discipline, or government, it must be sent down to Presbyteries for their consideration. Presbyteries shall be issued with the text of the relevant Report, an explanatory note (if need be) regarding any technical or legal matters, possibly the intended text of the amending Act, and details of the vote in the Assembly. Presbyteries have to indicate whether they approve or disapprove, and they have to give the actual numbers voting. They may make suggestions for what they believe would be for the improvement of the legislation proposed, but if the Assembly Committee that receives the Returns takes the view that the suggestions made alter in any way the aim of the legislation proposed, approval would be counted as disapproval. The reaction of the Presbyteries is reported at the following Assembly, and if there is a majority of Presbyteries approving, then that Assembly may enact the legislation proposed, incorporating any minor amendments considered to be necessary or desirable. This is because legislation is the prerogative, not of the Presbyteries, but of the Assembly as the supreme court of the Church, and, further, the composition of the Assembly changes from one year to the next, so that no two Assemblies are quite alike, and may well see things differently from one another.

An Act that has been subject to Barrier Act treatment does not of necessity require Barrier Act treatment if subsequently it is to be amended or repealed (see *Weatherhead* p. 56ff). Acts passed under the Barrier Act become "binding rules and constitutions of the Church".

Other Acts are passed by the General Assembly without their having to go down to Presbyteries. Nonetheless they are just as binding on the Church. They include Declaratory Acts which, as their name implies, declare what the law is on a certain subject, usually "for the avoidance of doubt". Acts are often proposed by some Council or Committee. Some may have a bearing on some aspect of Church doctrine, worship, discipline, or government, and yet not be required to be sent down under the Barrier Act. Nowhere is clear guidance given as to where the dividing line is to be drawn. Broadly speaking it would probably be said to fall between major and minor changes. Ultimately it is for the General Assembly themselves to decide whether or not to invoke Barrier Act procedure.

2.2.2 Regulations

Alongside Acts of the General Assembly, and often closely associated with them, are Regulations. These usually incorporate the administrative procedures necessary for Acts to be implemented. There is considerable advantage in having the material in the Regulations separate from the Acts, as Regulations can be approved and amended more easily by simple decision of the Assembly.

2.2.3 Injunctions

The General Assembly may "instruct" or (albeit rarely these days) "enjoin" Presbyteries, Kirk Sessions, or members to comply with some course of action. This is a serious step for an Assembly to take, and it should not be resorted to unless the specific injunction is capable of being, and will be, enforced. Otherwise the Assembly would be better advised simply to "urge", "recommend", or "commend".

2.3 Litigation

The third main feature of the business of a General Assembly is litigation. As the supreme court, the General Assembly may be called on to deal with Petitions, Appeals, Dissents and Complaints, or References. These matters will be dealt with more fully in the Chapter on "Procedure in Church Courts". Here it should be noted that Appeals and Dissents-and-Complaints are in a different category from References in that the former constitute contentious "cases". Petitions may fall into either category, and the Assembly's Committee on Overtures and Cases will judge whether Answers should be invited from an appropriate body (e.g. one of the Councils of the Church) and the Petition treated as a contentious case. The importance of this distinction has been underlined by a decision of the General Assembly in 1994 which resolved that "whenever the Assembly are hearing a Case, a vote shall be taken by Ballot Papers" [Reports, p. 7] now electronically. Whenever the Assembly are engaged in litigation, parties appear "at the Bar" and, after making their submissions and replying to any questions addressed to them by commissioners, are then "removed". When the Assembly have reached their decision, parties are recalled, and the judgment of the court, which is final, is intimated to them.

3. Delegation of Powers

The General Assembly have recognised the need for a measure of delegation of their powers, principally for two reasons.

3.1 Commission of Assembly

One is the fact that, with the Assembly meeting only once a year, to have to wait in some circumstances for almost a year to obtain the supreme court's final judgment is now regarded as unacceptable. It is partly for this reason that delegated powers have been given to the Commission of Assembly to act "as if the General Assembly themselves were acting".

Every Assembly before it dissolves appoints a Commission of the General Assembly. By Act VI 1997 as amended the Commission has had its membership considerably altered and its powers increased. Its powers are now principally: (a) to dispose of any matter referred to it by the Assembly; (b) to dispose of any matter affecting the general interests of the Church at home or abroad when the Church would be adversely affected by postponing consideration to the time of the next Assembly; (c) to hear and finally dispose of (i) all Appeals and Dissents and Complaints except those delegated to the Judicial Commission or to the Ministries Appeals Panel [Act VI 2007], but including those formerly dealt with by the Property Commission; (ii) all

References in cases of adjustment; and (iii) all petitions except those for the admission or readmission of ministers. The Commission shall number one-tenth of the membership of the Assembly, including at least one minister and one elder from each Presbytery. The quorum is one-third of the total membership including at least one-third each of both ministers and elders. In Cases questions of competency and relevancy will be considered by the Assembly's Committee on Overtures and Cases who may produce a report, possibly with recommendations, for circulation to members and parties. Any such report shall be debated at the outset of the case. In Cases an Investigating Committee numbering three to five shall report on the facts as ascertained by it. There shall be no right of appeal against the Commission's judgments.

3.2 Judicial Commission

The other factor underlying the delegation of powers is the recognition that, when dealing with disciplinary or contentious matters, it is more satisfactory if this is done by a body smaller than the Assembly. With this in mind the General Assembly have established a Judicial Commission to hear and adjudicate finally on certain Appeals. These include appeals arising under the Act anent Congregations in an Unsatisfactory State (see Chapter on "The Presbytery") and appeals arising under the Discipline Act of 2001 (see Chapter on "Discipline"). However, if the issue is one of doctrine, the appeal is to be heard by the General Assembly themselves [Act II 1988 Section 3, as amended]. The judgments of the Judicial Commission, being final, are simply reported to the next meeting of the General Assembly.

3.3 Ministries Appeal Panel

There is one other body with delegated powers to hear judicial cases. The Ministries Appeal Panel was established by Act VI 2007 to resolve cases where decisions of the Ministries Council (in respect of all matters relating to selection and training for the ministries of the Church) were challenged. As the Council is not a Court of the Church, this effectively extended the normal rights of Appeal, and Appeals taken solely against the decision of, say, the individual's Presbytery would be heard by the Commission of Assembly in the usual way.

3.4 Special Commissions

The General Assembly may appoint a Special Commission where a piece of work requires to be done by a body that has all the authority of the parent body, to an extent that cannot be said of the Standing Councils and Committees. Special Commissions have been appointed in recent years to examine constitutional questions, complex legal questions, or long-running disputes, or to resolve a dispute that may have wider implications for the law of the Church. Special Commissions are normally established to work for either one or two years, and the remit of each will make clear whether it has power to issue the matter before it without further decision of the Assembly, or must instead bring a Report for consideration and decision by the Assembly just as a standing committee would do. In any working year there will normally be one or two Special Commissions in existence, and their clerking is provided from the Principal Clerk's Office.

4. Miscellaneous

4.1 Timing

Current practice is for the General Assembly to meet annually in May in Edinburgh, although it is not obliged to meet either there or then. The only recent departure from this arrangement came in 1990 when one session was held in Glasgow. The Assembly meet in public unless they resolve to meet in private to deal with some particular matter.

4.2 Lord High Commissioner

The Sovereign has the right to be present whenever the General Assembly are in session. When the Sovereign cannot be present in person, a Lord High Commissioner attends in place of the Sovereign. During the period of the General Assembly the Lord High Commissioner is in residence in the Palace of Holyroodhouse. When attending the Assembly, the Sovereign or Lord High Commissioner with their suite sit in the Throne Gallery which is so placed behind the Moderator's chair as symbolically to represent the separation between Church and State. Sometimes the Lord High Commissioner is a member or office-bearer in the Church of Scotland. Even in these circumstances, if the Lord High Commissioner should wish to take part in any debate (as distinct from making the formal opening and closing speeches), he or she would have to hold a commission and would have to leave the Throne Gallery to contribute to the debate.

4.3 *Nobile Officium*

Despite all the laws enacted, the regulations passed, and the procedures adopted by the General Assembly, some situation may arise which is not covered by any existing provision. Should this happen, the General Assembly can make use of a special power called *Nobile Officium* which it has as the supreme court of the Church. This is a power "to determine and order such things as are necessary to be done for which there is no legal provision". It is unusual for this power to be used, though it was relied on in 1999 to enable consideration of a petition that would otherwise have been procedurally incompetent; and it is fitting that it should be possible for the Church's supreme court to be able to supply the want of law when necessary. (see *Weatherhead*, p. 53).

4.4 Protestations

At the final ordinary business session of a General Assembly "Protestations are called for". This is done to deal with the situation where someone has not appeared in the Assembly in pursuance of an Appeal or of a Dissent and Complaint taken against a Presbytery. In order to establish that as a result the Presbytery's decision has become final, a commissioner from the Presbytery concerned will ask the Assembly to declare that the Appeal or the Dissent and Complaint has fallen. The most recent case of a protestation being taken occurred in 2006.

5. Assembly Councils and Committees

Although the General Assembly meet only for a few days in each year, the work of the Church at home and abroad requires day to day attention, and that ongoing work is discharged through a number of Councils and Committees appointed by and answerable to the General Assembly under Acts passed and Regulations approved by the Assembly.

The members of the Councils and Committees are appointed by the General Assembly on the recommendation of the Assembly's Nomination Committee. Members serve for four years and are eligible for re-election only after a lapse of one year, unless the Assembly are satisfied "that there are circumstances that make re-election desirable" [S.O. 115]. No more than one half of the retiring members are to be re-elected, and no member shall normally serve for more than two consecutive terms of office. There is also a recommendation that, if possible, 20% of Assembly-appointed members should be under 35 years of age. In normal circumstances no one should serve on more than three Standing Committees at any one time.

As of 2005 Presbyteries as such no longer have representation on Assembly Councils and Committees other than on the Committee to Nominate the Moderator of the General Assembly.

The General Trustees are not, strictly speaking, an Assembly Committee. The Trustees, though appointed by the General Assembly, used to serve for life or until they voluntarily retired or resigned. They are now required to retire on reaching the age of 75 years. Similarly, there are other trusts for financial and property purposes.

Special Committees can be appointed as may be required. Though there is no formal definition of the difference between a Special Commission (see above) and a Special Committee, it is generally understood that the former has the full delegated authority of the Assembly, while the latter is a committee like any other but with a short life-span and for a very limited purpose.

The Church of Scotland "*Year Book*" contains a list of the major Councils and Committees, with an indication of their principal responsibilities.

CHAPTER FIVE - PROCEDURE IN CHURCH COURTS

August 2009

Over the years a common way of conducting the business of the courts of the Church has been established. In practice the procedure followed in Kirk Sessions and possibly also in the smaller Presbyteries may be more flexible, but it is in the interest of every court to observe the accepted rules and procedure, as not to do so can lead to confusion, wasted time, and possibly even injustice.

1. Standing Orders

To regulate their procedure most courts have Standing Orders. To suspend a Standing Order it is necessary to obtain a two-thirds majority of those voting on a motion to that effect. A simple majority is all that is needed to alter a Standing Order, but in this case Notice of Motion (see below) has to be given. In the absence of a Standing Order that obtaining in the next higher court is held to apply.

2. Types of business

Procedure in a court begins with material being brought to the attention of the court in some form or another. It will generally take the form of a Report, but it can also come in one of the following other ways:- Petition, Overture, Appeal, Dissent and Complaint, or Reference. Each serves a different purpose, and the way in which each is presented differs, but once the stage of presentation is passed, the way in which the court deals with the material before it is the same for each.

2.1 Reports

This is the way in which a Committee brings the results of its investigations and deliberations to the notice of a court. Attached to the Report will be a Proposed Deliverance which will be moved once the Report has been presented. This is usually done by the Convener of the Committee. The Deliverance will then be seconded. Often this is done formally without any speech. After an opportunity has been given for questions, the court will begin to consider the Deliverance. Motions will be called for, either section by section, or on the Deliverance as a whole, depending on whether the Deliverance deals with a number of different matters or only one.

2.2 Overtures

When what is desired is something of general concern to the Church rather than of particular concern to an individual or group, the means to be employed in seeking support for it is for one Court to present an Overture to the other, appropriate court. The Overture will begin by setting down the reasons for promoting it, and it will then go on to ask the court (generally the General Assembly) to take some action. This will be expressed in the form of a Proposed Deliverance. A Kirk Session may not overture the General Assembly. If a Kirk Session wishes the Church to address itself to a particular issue, it must raise the matter in Presbytery, and, if the Presbytery supports it, the Presbytery will then take responsibility for it and itself overture the Assembly. If an Overture proposes some legislation, the terms of that legislation must be appended to it. As an Overture is in essence akin to a Notice of Motion, once the Proposed Deliverance has been moved and seconded, normal debating procedure will then follow. When the General Assembly are in session, any twelve commissioners may overture the Assembly in their own names. The presentation of an Overture places no one "at the bar".

2.3 Petitions

When some individual or group wishes action to be taken by the appropriate court over some matter of particular interest or concern to them, they do so by presenting a Petition. A petitioner can be some individual or body outwith the Church. A petition can also be submitted by a lower court to a higher court. A petition cannot be presented by someone who is not a signatory to it, except where legal representation is used. Petitioners appear "at the bar" irrespective of whether or not they are members of that court. Petitioners must also advise any parties with an interest in the petition, so that they may apply to be heard and possibly lodge answers. If this is not done, the court may decline to receive the petition, or may sist procedure until parties are informed. The petition will begin with a succinct summary of the facts, and it will then indicate the action which the petitioner wishes the court to take. This is called "the crave". If the petition calls for Assembly legislation, a Draft Act must be appended to it. When the petition is dealt with, it is first read (or taken as read if it is already in print and circulated), then it is received (unless it is judged to be incompetent), and then the petitioner will speak to its merits. After an opportunity has been given for questions to be addressed to the petitioner, the petitioner is "removed", and motions are called for. The crave of a petition is either granted, possibly "to the extent that ...[here specify]" or not granted. (see *Weatherhead* pp. 45-46).

2.4 Appeal, or Dissent and Complaint

These two procedures, which have much in common, are the means by which someone can attempt to get a higher court to overturn a decision of a lower court which has not had finality of judgment on the issue in question. The distinction between the two is that, if that person has been "at the bar" in the lower court, he or she *appeals* to the higher court. On the other hand, if the person who wishes to see the court's decision reviewed is a member of that court, then that person will *dissent and complain*.

Act V 2004 anent Intimation of Appeals gives anyone who has a legitimate interest seven days in which to appeal by submitting an itemised Note of Appeal to the appropriate Clerk. A Dissent and Complaint can be made even though no Appeal is taken. Intention to dissent and complain has to be intimated as soon as judgment is given. The actual dissent and complaint, if being pursued, has to be lodged with the Clerk within ten days from the day following the judgment of the court.

When an appeal or dissent and complaint has been presented in the higher court, members of the higher court may ask questions. When questions are finished, parties are "removed", motions are called for, and the issue is debated until a judgment is reached, which will be either to grant, possibly "to the extent that [here specify]", or to dismiss. An Appeal in regard to either a part of a case or a point of procedure does not sist procedure, but is held over until the whole appeal has been heard, and judgment on the merits has been reached [Act III 2000 Section 40].

2.5 Reference

A lower court (normally a Presbytery) may refer a matter for decision to a higher court (normally the General Assembly). Where the lower court is unable to reach a decision for one reason or another (perhaps because of its technical difficulty, or a sense of conflict of interest in the lower court), or where it feels that the matter at issue is of such importance that it would be better for the issue to be settled at the highest level, it should refer the issue. However, the lower court should have very great hesitation in taking this particular course of action, as an unnecessary reference is generally regarded with disfavour as being an evasion of responsibility.

The procedure in the higher court is as follows. The Reference will first be stated. Members of the referring court, if they are also members of the higher court, are not "at the bar", but if the person presenting the Reference is not a member of the higher court, it is from the bar that the Reference must be presented. Once the Reference has been presented, the Assembly shall then be asked whether they agree to sustain the Reference or not, in other words, "Is this an appropriate matter for consideration?" If the Reference is sustained, the Assembly will then consider the merits of the point at issue. If the Reference is not sustained, it is sent back to be disposed of by the referring court. (see *Weatherhead*, pp. 46 and 52).

3. Conduct of Debate

Standing Orders of the General Assembly [72 – 79] indicate the order in which parties in Cases will state their case, and how often they may speak.

3.1 Motions: types

In whichever of these various ways an issue is brought to the attention of a court, once a motion has been moved and seconded, if it is not accepted as it stands, it can be altered in one or other of the following ways:-

3.1.1 Counter-motion

A counter-motion proposes a course of action very different from that of the original proposal.

3.1.2 Amendment

An amendment proposes some alteration which does not run counter to the main thrust of a motion or counter-motion.

3.1.3 Addendum

An addendum is a form of amendment, but, as the word itself indicates, it is reserved for an amendment that adds something to a motion or counter-motion without seeking to remove any of the original words.

An amendment or an addendum should be disposed of as soon as possible after being moved and seconded. Voting is FOR or AGAINST the amendment or the addendum. Similarly, any further amendment, if seconded, shall be debated and voted on prior to consideration of the original amendment or addendum (S.O. 97). If an amendment or an addendum to a motion or to a counter-motion is successful, the motion or the counter-motion becomes the motion as amended or the counter-motion as amended for the purposes of further debate. Eventually what will be before the court will be the motion, possibly amended, and perhaps also a counter-motion or counter-motions, also possibly amended. Voting is then FOR the motion (as possibly amended) and FOR any counter-motion (as possibly amended). If the vote is among the motion and more than one counter-motion, whichever receives the fewest votes falls, and another vote is taken. This process is repeated until there is a majority for one over all the others.

When the process of voting is completed, the successful motion should then be put to the court for acceptance or rejection. In the pressure of the moment this is sometimes overlooked, but it is the essential final stage in every debate, as it may be that the court wants to reject the whole issue in whatever shape or form it may have come to be expressed. What has happened up to this point has been a systematic whittling down of options. At every vote members have expressed their preference in regard to what at that point has been on offer. In other words the voting process establishes what people are prepared to accept if need be, but always there has to be a final vote to see if what is ultimately on offer is acceptable.

3.1.4 Direct Negative

There is never any need to move "the direct negative". A vote against the motion (if necessary at the very last stage just described) achieves the same end.

3.2 Debate: miscellaneous provisions

3.2.1 Withdrawal of Motion

A motion that has been moved and seconded can only be withdrawn by permission of the court.

3.2.2 Unseconded Motion

If a motion is not seconded, it falls and is not recorded.

3.2.3 Motions to be handed in

In the course of a debate all motions should be submitted to the Clerk in writing.

3.2.4 Right of reply

The mover of an amendment or a counter-motion, and the proposer of an Overture who is a commissioner may reply to the discussion immediately before the Convener closes the debate [S.O. 81 and 85].

3.2.5 Questions

Questions may be asked at any time during a debate [S.O.44].

3.2.6 Notice of Motions

Notice of motion can be given at one meeting for consideration at the next, or it may be sent in to the Clerk between meetings for inclusion in the agenda for the coming meeting. A notice of motion is incompetent in dealing with the contentious issue in a Case, as to give notice would be to prejudge the issue. In Cases "judgment should be made solely on the basis of the pleadings" [S.O. 72]. The difficulty would not arise where a motion was brought in the context of debate on a case, but was a motion proposing some administrative action suggested by the subject-matter of the case, an action that would commend itself regardless of the outcome of the principal, contentious issue.

3.2.7 Procedure Motions

Sometimes there may be those in a court who for one reason or another do not wish discussion over a particular topic to proceed or to continue. Though the Church's legislation makes no special provision for such an eventuality, it is generally accepted that a motion "to move to the next item of business" or some such wording is in order. If such a motion is made and seconded, it is regarded as a procedural motion, and is voted on without discussion.

3.2.8 Voting

Only those present who have the right to vote at a meeting may vote. Church practice makes no provision for voting by proxy or for any form of referendum or plebiscite (see *Weatherhead*, p. 85). It is generally accepted that abstentions are not recorded. In no circumstances shall a vote taken electronically be repeated [S.O. 103].

3.2.9 Casting Vote

In all courts the Moderator has a casting vote only. It is generally accepted that in exercising a casting vote a Moderator's concern should be to maintain the *status quo* for the simple reason that the court has failed to produce a majority in favour of change.

3.2.10 Points of Order

Sometimes a speaker is challenged on a Point of Order. Quite often the interruption is made, not because of a possible breach of procedure, but because the challenger is looking for information or clarification on some point of order. If this proves to be the case, the Moderator should advise the challenger to put the point he or she wishes to make either as a question or in the general debate. Where a genuine point of order over procedure is raised, the challenger shall state the grounds for raising it usually referring to the Standing Order the challenger believes has been infringed; the speaker may reply briefly to show that he or she is not out of order; but no other member may speak except by permission of the Moderator. The Moderator shall then give his or her ruling, but before doing so may invite the court to vote on the matter. The Moderator's ruling can be challenged, and, if it is, a vote will have to be taken.

3.2.11 Minority Reports

There is no place in the Church's practice and procedure for presentation of a Minority Report. The actual Report should indicate if and where there has been any substantial disagreement with the majority position. A member of the Committee which drafted the Report may dissent from the Committee's findings, but cannot dissent and complain to a higher court. When the Report is presented, that member, if a member of the court to which the Report is submitted, may make a motion and, if not a member of the court, may present a Petition. This position was reaffirmed by the General Assembly of 1997. (Reports, p. 1/8).

3.2.12 Simple Dissent

When a final decision has been taken on any matter, provided the matter has gone to a vote, it is always possible for anyone dissatisfied with the outcome to ask for his or her dissent, and the reason for it, to be recorded. Others may "adhere" to the dissent, but they can do so only there and then. No further action follows on a simple dissent. If there is a wish to take the matter further, it is necessary to "dissent and complain" (see above).

3.2.13 Lack of Quorum

If ever it is established during a meeting of a court that there is no longer a quorum, this does not invalidate any decisions taken earlier in the meeting. The meeting, however, would have to be suspended.

3.2.14 Time Limits on Speeches

The General Assembly of 2008 amended the Standing Orders on this subject, increasing the time limits in certain circumstances. S.O. 92 as amended now reads: "Conveners of Councils shall be allowed up to 20 minutes to present their Reports, using their discretion as to how the time shall be allocated. Movers of amendments or counter-motions up to 10 minutes. Introducing an Overture and speeches of Petitioners up to 10 minutes. All other speeches 5 minutes." All other bodies are free to set their own time limits. They may choose to continue with the time limits that previously applied in the General Assembly – 10 minutes for presenting a Report, 5 minutes for moving a motion or a counter-motion. No change has been made where no time limits apply.

3.2.15 Costs Of Printing

Any person who seeks the judgment of a court is liable for the printing costs involved. This applies equally to a Petitioner, an Appellant, or a Complainer, and applies no matter which may be the court involved. However, "in cases of discipline brought before the Assembly by the Judicial Commission, by Reference from a Presbytery, or

by complaint by a minority of the Court" the expense of printing shall be borne from central funds [S.O. 62]. The courts will have their own costs to meet where they prosecute in cases of discipline. Presbyteries have been warned against employing solicitors on an open-ended contract, have been advised to try to get an estimate of costs, and it has been suggested that they could undertake some of the work themselves much more cheaply.

CHAPTER SIX – MINISTRY OF WORD AND SACRAMENT

October 2009

All queries on issues relating to the professional ministries of the Church should be addressed to the Ministries Council, which is preparing text to appear here in future.

CHAPTER SEVEN - VACANCY PROCEDURE

August 2009

Every congregation at some time or another experiences a vacancy when it does not have its own minister. Out of a desire to shorten the length of vacancies the General Assembly of 2003 passed two Acts – an Act anent Vacancy Procedure (Act VIII) and an Act anent Appraisal and Adjustment (Act VII). A feature of Act VII (which is described under Appraisal and Adjustment, elsewhere in these materials) is the preparation of a Presbytery Plan, and a feature of Act VIII is the appointment of Vacancy Procedure Committees. Where a vacancy occurs in a Presbytery with an approved Plan, the whole vacancy can be transacted by the Vacancy Procedure Committee (VPC) without any delay through having to wait for a meeting of Presbytery to deal with some detail or other. The VPC must, however, report all its transactions to the Presbytery as they are taken, and intimations of actions taken or proposed are given to congregations as necessary. Section 2 of Act VIII sets out the procedure to be followed if any objection is raised either by members of a congregation or by members of the Presbytery. This does not constitute an appeal or dissent and complaint. When the Presbytery has settled the point at issue, the VPC shall continue its work.

The Act anent Vacancy Procedure requires Presbyteries to appoint a number of their members to be available specifically to serve on Vacancy Procedure Committees. As soon as a vacancy arises or is anticipated, the Presbytery Clerk shall be informed, and the Moderator and the Clerk shall appoint a committee of five from that number to serve in that vacancy. The same VPC can serve in more than one vacancy at any one time. Its membership shall include at least one minister and one elder. All interested parties are excluded. Its Clerk need not be a member of the committee, but may be the Presbytery Clerk. The committee's quorum is three. The committee need not meet to deal with non-contentious matters, but any member of the committee can request that a meeting be held. All decisions of the committee shall be reported to the next meeting of the Presbytery.

1. Causes of Vacancy

A vacancy can arise for a variety of reasons.

1.1 Death

When a parish minister dies, the Presbytery meets, generally on the day of the funeral, to appoint an Interim Moderator to act with the Kirk Session and Financial Board in making arrangements for pulpit supply and the general ongoing work of the charge. The choice of Interim Moderator will be made by the VPC. The Presbytery may meet without formal summons (Act XX 1931), although it is customary for press intimation to be given. The Presbytery does not meet to conduct the funeral. There is therefore no need for the Presbytery to meet in the case of the death of a non-parish minister; but, as a parish minister does not have his or her own minister, in these circumstances it will be for the Presbytery to conduct the Service, having regard to the wishes of the deceased and his or her family. The date of the commencement of the vacancy is the date of the death of the minister.

1.2 Translation

When a parish minister receives a Call from another congregation, the Presbytery Clerk notifies the minister concerned and arranges for the appointment of a VPC. The VPC shall decide whether to release the minister and, if so agreed, shall advise

the minister to await the instructions of the calling Presbytery, and shall intimate to the congregation(s) the date on which their vacancy will begin, and the name of the Interim Moderator. Special rules apply to the release of a minister in the first five years of his or her first charge (see below).

1.3 Demission

When a parish minister decides to retire on grounds of ill-health, or wishes to demit his or her charge either to take up a non-parochial appointment within the Church of Scotland or to transfer to the service of another Church, or wishes to leave the service of the Church - in any of these circumstances the minister concerned shall submit in writing to the Presbytery Clerk a request to demit (the ecclesiastical term for relinquishing office), and the Presbytery Clerk shall arrange for the appointment of a VPC. The VPC shall decide whether to release the minister and, if so agreed, shall intimate to the congregations(s) the date on which the vacancy will begin, and the name of the Interim Moderator.

A minister need not give notice of intention to demit if demitting because of reaching the statutory retirement age, nor if demitting in terms of a Basis of Adjustment, but in these circumstances the same procedure should be followed as far as applicable.

If demission is to be on the grounds of retirement, at least six months' notice should be given by the minister. At the same time the minister should also make application to the General Assembly's Pension Trustees for an Annuity. Before dealing finally with such a request to demit, a Presbytery must endeavour to be assured in writing by the minister that he or she has been informed of his or her pension entitlement and has had time and opportunity to respond and act on that information (Reports 1991, p. 112). Before agreeing to a minister's retirement on health grounds the Presbytery must have the consent of the Trustees.

If a minister seeks to demit status (i.e. as a minister of the Church of Scotland), this is a matter for the Presbytery as a whole to determine. The Moderator, or a deputy appointed by the Moderator, shall confer with the minister regarding his or her reasons for making the request, and shall report to Presbytery if there appear to be grounds for not granting permission. If the minister is also demitting a charge, this shall be a matter for the VPC. If permission be granted, the Presbytery shall immediately inform the Ministries Council.

1.4 Termination of Tenure

When a minister has been serving a charge on a basis of reviewable tenure, the Presbytery may terminate tenure on whatever terms are specified in the written Basis of Reviewable Tenure. On the expiry of the period of notice (six months from the decision of the review) the minister shall be deemed to have demitted the charge, and the charge shall become vacant as of that date.

1.5 Severance of Pastoral Tie

Severance of the pastoral tie between minister and congregation may occur as a result of disciplinary proceedings against the minister (Act III 2001, see elsewhere), or may result from a congregation being found to be in an Unsatisfactory State (Act I 1988) or in Changed Circumstances (Act VI 1984 as amended by Act XI 2005), or as a consequence of absence through long-term illness (Act XV 2002).

1.5.1 Disciplinary Proceedings Act III 2001

A vacancy will arise where, as a consequence of disciplinary proceedings initiated by the Presbytery, the judgment passed calls for either removal of status or suspension from office of such length that the Presbytery resolves that the pastoral tie requires

to be terminated. The date of termination shall be that of the meeting at which the Presbytery reaches its decision. (Act III 2001 Section 20(2)).

1.5.2 Act I 1988

In the case of a congregation deemed by the Presbytery to be in an Unsatisfactory State, where the Presbytery has also found that the unsatisfactory state will continue unless the pastoral tie is dissolved, the Presbytery shall immediately proceed to dissolve the pastoral tie as from a specified date and shall declare the charge vacant as from that date. The Presbytery shall appoint an Interim Moderator and shall suspend the minister from office as minister of the charge until the date appointed by the Presbytery for dissolution of the pastoral tie, or until the case is settled on appeal (Act I 1988 Section 16).

1.5.3 Act VI 1984

In the case of a congregation in Changed Circumstances, the Presbytery with the concurrence of the minister, the Ministries Council, the General Trustees and any other interested party, may resolve to terminate the minister's tenure. If it does, the Presbytery in setting the date of termination of tenure may allow a period not exceeding one year for the minister to receive a Call to another charge or to secure a new appointment (Act VI 1984 Section 8).

1.5.4 Ill-health

Act XV 2002 as amended by Act VIII 2006 specifies the conditions under which a Presbytery may terminate a pastoral appointment in view of a minister's long-term illness.

2. Interim Moderator

Whatever the circumstances giving rise to a vacancy, the VPC shall appoint an Interim Moderator and shall intimate the appointment to the congregation(s). The Interim Moderator shall be (a) a minister of Presbytery who is not a member of the charge, or (b) a minister of a neighbouring Presbytery appointed by the Legal Questions Committee to serve as a Presbytery Assessor in terms of Act V 2001, or (c) a member of Presbytery not a member of the charge who has received training as specified by the Ministries Council. The Interim Moderator cannot be a member of the VPC. The name of the Interim Moderator shall be intimated to the Ministries Council.

It is the Interim Moderator's duty to preside at all meetings of the Kirk Session(s) and at all congregational meetings once the vacancy has begun and, prior to that date, for business connected with the prospective vacancy; but where a congregational meeting has been called by the Presbytery, the Interim Moderator, after constituting the meeting, shall relinquish the chair to the representative of the Presbytery, although remaining free to speak. The Interim Moderator, in consultation with the Kirk Session(s) and the Financial Board(s), shall make arrangements for pulpit supply and pastoral care during the vacancy. The Interim Moderator shall act as an Assessor to the Nominating Committee and may act as its Convener, but without a vote in either capacity. It is desirable that the Interim Moderator should at an early date introduce himself or herself to the vacant congregation(s), and explain in broad detail the steps which the Presbytery and the congregation(s) need to take in the coming months.

3. Requests for Interim Ministry

In 1996 the General Assembly approved the concept and introduction of Interim Ministry in the case of a vacancy where, because of the circumstances of the charge, the Presbytery has judged it inadvisable to proceed to make a regular appointment.

The interim minister is recruited and employed under contract by the Ministries Council, is introduced by Presbytery to the charge, serves as Interim Moderator during his or her appointment, has a seat in Presbytery, but is not eligible for consideration as a possible nominee in the vacancy that follows the expiry of the interim appointment (see also Reports 1999, p. 17/22).

3. Permission to Call

If there is an agreed Plan and all its provisions affecting the vacant congregation(s) have been implemented and there are no outstanding appeals or dissents and complaints or requests for adjudication, permission to call a minister may be given by the VPC, otherwise permission will be withheld (Section 8).

There are other factors, in addition to the provisions of Act VII 2003 which the VPC has to take into account before it can give a congregation permission to call a minister. If the Committee considers that there are any unjustified shortfalls in contributions to central funds, or that the Ministry Requirement Schedule will not be approved, or that the Presbytery will require work to be carried out at the manse, or if the Committee believes that there is some other reason which would warrant the Presbytery delaying to give permission to proceed, the Committee must refer the question of permission to call to the Presbytery. These three matters require to be considered by the Presbytery at the earliest possible opportunity (Section 9).

5. Presbytery Advisory Committee

As soon as possible after the Presbytery Clerk has been informed of a vacancy or an anticipated vacancy, the VPC shall appoint a Presbytery Advisory Committee of three persons, of whom at least one shall be an elder and at least one shall be a minister, to assist the congregation(s) in the filling of the vacancy, and also how the Nominating Committee shall be elected (Act II 2005). The committee may contain members of the VPC (Act I 2008), and may contain persons not members of the Presbytery (Section 12).

The Advisory Committee shall meet first with the Kirk Session(s) and then with the Nominating Committee. It may meet with the Nominating Committee at any other time at the request of either committee, and it must meet with the Nominating Committee before that committee intimates to the Kirk Session(s) and to the Presbytery the identity of its nominee. Being an advisory committee, its members have no vote, nor has it a veto, but, if a Call comes to Presbytery under Section 2 procedure, the committee is entitled to be heard if it so desires, and the Presbytery, if it so wishes, may ask for a report from it (Section 28(2a)). In the case of charges considered by Presbytery to be remote, it will be adequate if the Interim Moderator, accompanied if possible by a member of the Nominating Committee, meets with the Advisory Committee.

6. Electoral Register

Whenever there is a vacancy, it is the duty of the Kirk Session to make up the Electoral Register of the congregation. When finalised, the Register is attested by the Interim Moderator and the Session Clerk, and is submitted in duplicate to the Presbytery Clerk also for attestation, the names and addresses being in alphabetical order and numbered consecutively. After attestation, the principal copy shall be returned to the congregation. Only those whose names are on the Electoral Register may take part in the subsequent proceedings, but if more than six months elapse between the Register being attested and the congregation being able to call, the Kirk Session may revise and update the Register, intimating to the congregation its intention to do so. Two copies of the additions and deletions shall be made, attested

and transmitted as before, the principal copy being returned to the congregation after attestation by the Presbytery Clerk.

Those whose names can appear on the Electoral Register are (a) those whose names are already on the Communion Roll, (b) those whose names are added to the Communion Roll before the Electoral Register is finalised either by submitting Transference Certificates or by Resolution of the Kirk Session, and (c) those who have applied in writing to the Kirk Session to have their names added as adherents. Anyone whose name is on the Supplementary Roll may apply to the Kirk Session to be included in the Electoral Register (Act VI 2000 Section 12(3)). The Register shall be made available for inspection and, if necessary, correction. When the Register is being finalised, parties having an interest can be heard. The decision of the Kirk Session in regard to the Electoral Register is final.

7. Appointment of Nominating Committee

When permission to call has been given and the Electoral Register has been attested, the Interim Moderator shall give two Sundays' notice of a meeting of the congregation to appoint a Nominating Committee, whose size (being an odd number up to a maximum of thirteen) shall have been determined by the VPC. When more than one congregation is involved, the VPC shall determine how many shall serve from each congregation. Where a team ministry or a designated post such as a chaplaincy is involved, the Presbytery may appoint up to two representatives to serve on the Committee. The Nominating Committee shall not have powers of co-option. If need be, a Kirk Session may appoint a replacement. The Interim Moderator presides at the congregational meeting. The procedure in regard to the nomination and election of those to serve on the Committee is detailed in Section 14(2) as amended by Act II 2005.

The Interim Moderator shall preside at the first meeting of the Nominating Committee. At this meeting a Convener and a Clerk are appointed. If the Committee so desires, the Interim Moderator may act as Convener. The Convener has a deliberative vote, but not if he or she is the Interim Moderator. The Convener does not have a casting vote. The Clerk, if not a member of the Committee, does not have a vote. The Interim Moderator, whether or not Convener, acts as an Assessor to the Committee, being available to offer it guidance and advice, including for the process of candidate interviews (Sections 15 and 16).

It is the duty of the Nominating Committee to nominate one person with a view to election and appointment as minister of the vacant congregation. It shall intimate the vacancy in a monthly vacancy list and use a system of application and interview, and it may also advertise the vacancy and receive recommendations and pursue enquiries in other ways. Where there is a ministerial team, the Committee shall inform themselves of their roles, and may meet with the other members (Section 16).

8. Eligibility for Election

Sections 17-19 of the Act, as amended, list those, and only those, who are eligible for nomination, election, and call to a Church of Scotland charge

9. Nomination

Before being asked to accept nomination a candidate shall be given adequate opportunity to see the church or churches, halls, and manse, and to meet with all members of staff or ministry team. The candidate shall also be given copies of the constitution of the congregation, of the current Presbytery Plan and of any current Basis of Adjustment or Reviewable Tenure, and the most recent audited accounts and statement of accounts. Receipt of these documents shall be acknowledged in writing.

The candidate must give consent to nomination in writing, and prior to nomination being reported to the VPC the Presbytery Clerk shall obtain from the nominee or the Interim Moderator evidence of the eligibility of the nominee to be appointed. In particular, where the candidate has not yet completed five years' service in his or her first charge, a "releasing" Certificate has to be supplied by the candidate's Presbytery (Section 14). A Certificate will be granted without question if the minister has been serving on Terminable Tenure.

On receipt of notice of the committee's nomination, the Interim Moderator shall inform the Kirk Session(s) of the decision, and the decision shall also be intimated to the congregation(s) on two Sundays. At the same time intimation shall also be given of the arrangements made for the nominee to conduct public worship and for the vote to be taken, agreement having been reached with the minister or Interim Moderator where another congregation is involved.

10. Election

Election being by ballot, at the appointed time(s) and place(s) ballot papers, printed in the recommended form, shall be issued to those present whose names are on the Electoral Register, this fact being noted on the Register. A ballot box shall be provided for the completed papers. Where another congregation is involved in the same ballot process at the same time, the Interim Moderator shall in writing appoint a member of Presbytery to take full charge of its ballot.

At latest within twenty-four hours of the close of the voting the Interim Moderator shall constitute the Kirk Session(s) and shall proceed with the counting of the votes, all the voting papers being mixed together before the count begins. If the number of votes cast FOR exceeds the number AGAINST, the nominee shall be declared elected. If the number of votes cast FOR is equal to or less than the number AGAINST, the Interim Moderator shall declare that there has been a Failure to Elect, and that the Nominating Committee is deemed to have been discharged, and, without reference to the Presbytery, the Interim Moderator shall proceed to arrange for the appointment of another Nominating Committee.

After the counting has been completed, the Interim Moderator shall sign a declaration of the result of the election, and this shall be affixed to the notice-board of the church(es) concerned and recorded in the minute-book of the Kirk Session(s). In the presence of the Kirk Session(s) the Interim Moderator shall seal up the voting papers along with the marked copy of the Electoral Register(s).

11. Withdrawal of Nominee

Should a nominee intimate withdrawal before preaching as nominee, the Nominating Committee shall endeavour to nominate someone else. Should a nominee intimate withdrawal after election, the Interim Moderator shall declare that there has been a Failure to Elect, that the Nominating Committee is deemed to have been discharged, and he or she shall then, without reference to the Presbytery, arrange for the appointment of another Nominating Committee.

12. Call and Transmission of Documents

Signing of the Call to the minister elect may begin as soon as the result of the election has been made known. Members and adherents whose names are on the Electoral Register may sign the Call in person or by the use of mandate forms prepared by the Kirk Session. A Paper of Concurrence in the Call may be signed by those who are regular worshippers. Both documents shall be available for signature for at least eight days.

Thereafter the Interim Moderator shall forward to the Presbytery Clerk the following documents:- (1) Minute of Nomination by the Nominating Committee; (2) all subsequent intimations made to the Congregations(s); (3) Declaration of Election; (4) Voting Papers and marked copy of Electoral Register(s); (5) Letter of acceptance from the minister elect; and (6) the Call and Paper of Concurrence when signing has been completed (Section 27).

From the date when permission to call is given a congregation is given one year to elect and call a minister. If necessary, application for extension of time can be made to the Presbytery, one further calendar month being allowed for this. Normally any extension shall be granted for a further three months. In exceptional circumstances, and for clear cause shown, a further extension of three months may be granted. Thereafter permission to call shall be regarded as having lapsed. The Presbytery may then look afresh at the whole question of adjustment; alternatively, the Presbytery shall itself take steps to make an appointment.

If the Presbytery decides itself to make an appointment, it may discharge the Nominating Committee, strengthen its Advisory Committee by appointing an additional minister and elder, instruct that Committee to submit a nomination to the Presbytery, and advise the congregation(s) of its decisions. If the Presbytery accepts the Committee's recommendation, it shall forthwith make the appointment. If the minister chosen accepts the appointment by letter, the Presbytery Clerk shall arrange for the minister to conduct public worship in the vacant church(es). The Clerk shall also intimate these arrangements to the congregation(s), shall advise them that a Call and Paper of Concurrence shall be available for signature in the normal way, and shall indicate when these shall be dealt with by the Presbytery.

Alternatively, the Presbytery shall instruct the appointment of another Nominating Committee, and the same procedure shall then be followed as from the appointment of the first Nominating Committee.

13. Sustaining the Call

All the documents listed in Section 27 shall be laid before the VPC. If the VPC sustains the Call, it shall appoint the date, time and place for the Induction (and Ordination, if necessary) of the minister. If there is no ordinary meeting of Presbytery due to be held before that date, the Moderator shall call a meeting *pro re nata*. If the Call is to a minister of a charge in another Presbytery, the arrangements made shall be subject to his or her release by the other Presbytery.

If the Call has to be considered by the whole Presbytery in terms of Section 2 of the Act, it and all the other documents shall be laid on the table, and the Presbytery shall hear anyone it considers to have an interest. In particular, the Advisory Committee shall be entitled to be heard, if it so desires, or the Presbytery may ask for a report from it. The Presbytery shall decide whether to sustain the Call. It shall take account of the number of signatories, and it may delay a decision to allow more time for signing.

If the Presbytery sustains a Call to a Graduate Candidate, provided there is no appeal against its judgment, it will appoint the date, time and place for the ordination and induction.

If the Presbytery sustains a Call to a minister of the Church of Scotland who is not a parish minister, or to a minister of another denomination, provided there is no ecclesiastical impediment, it will appoint the date, time and place for the induction.

If the Call is not sustained, either the Presbytery shall allow more time for it to be signed, or it shall treat the situation as a failure to Nominate, and it shall proceed accordingly (see Section 26).

14. Induction

After giving intimation to the vacant congregation(s) on two Sundays, the Presbytery shall meet for the induction (and ordination, if necessary) of the minister under call. If no objection to the minister's life or doctrine be alleged and immediately substantiated, and provided the Extract Minute agreeing to translation has been received in the case of a minister being translated from another Presbytery, the Presbytery shall then proceed with the Service and, having ordained the minister (if necessary), shall induct him or her to the pastoral charge concerned. The questions to be put to the minister, and subsequently to the congregation, are to be found in the Church of Scotland *Ordinal*. After the Service the Presbytery shall resume its session. The name of the newly inducted minister shall be added to the Roll of the Presbytery, and the Clerk shall be authorised to give certified intimation of the induction to the Session Clerk(s) and, where appropriate, to the Clerk of the minister's former Presbytery. The Clerk shall also give the newly inducted minister details of the parish boundaries and stipend, along with any other papers prepared by the Presbytery for issue to newly-inducted ministers.

In the case of a linking, induction shall take place only in one of the churches, with a Service of Introduction being held, if the Presbytery so decides, in the other church(es) (Section 30(1)).

In a case of deferred union or linking, the minister appointed shall be inducted to the congregation that is vacant "in deferred union or linking with the congregation of X" Subsequently, when the union or linking becomes effective, he or she shall be introduced at a Service of Introduction as the minister of the newly united or linked charge (Section 30(2)).

Where the minister of one congregation becomes the minister also of another congregation in terms of a basis of union or linking, the Presbytery shall arrange for a Service of Union or Linking and of Introduction to be held.

Induction is no longer *ad vitam aut culpam* (for life or fault). Induction is still *ad culpam*, but a minister is now required to demit his or her charge on reaching the age of sixty-five years (Act II 2000 Section 31). Nonetheless, a parish minister may request the Presbytery for his or her ministry to be extended for a period that does not extend beyond his or her 70th birthday. An extension may be granted only after the Presbytery has consulted all parties including the congregation(s), their views being established without the presence of the minister (Act XIII 2004). The existing rights of a minister who was inducted either *ad vitam aut culpam* or until reaching the age of seventy years, and of such a minister who subsequently becomes the minister of a united or linked charge, are not affected.

Introduction, not Induction, shall take place in the case of the appointment of an Associate Minister or other parochial appointment, preceded, if necessary, by ordination (Section 30(4)). The same shall also apply in the case of an extra-parochial appointment wholly or mainly under the control of the Church (Section 30(3)). In a Service of Introduction where ordination does not take place, the Moderator shall ask the minister to affirm the vows taken on ordination, and in the subsequent declaration, in place of "I induct you to _____" the Moderator shall say "I welcome you as _____" (Section 30(5)).

15. Congregational Intimations

Where intimations have to be made to congregations in terms of Act VIII 2003, these shall be either given verbally during an act of public worship or circulated in writing to the whole congregation.

16. Shared Ministry, Joint Ministry, Part-time Ministry

Act VIII 2003 does not specifically address situations where a charge is served by a part-time ministry, or where more than one minister shares the normal tasks of the parish ministry. The Presbytery and the Nominating Committee should adjust the process as necessary, but the requirements remain the same.

A shared ministry is the equivalent of a 'job-shared' appointment, so both individuals share a single set of rights and responsibilities. A joint ministry is one where each minister has a separate appointment. Both of these may involve (say) two ministers each doing 50% of a full-time ministry, but they are otherwise very different. In a shared ministry, as in any job-share, there would for instance be an expectation that one minister would do more of the work at a time when the other may be doing less (because they share a single responsibility to make sure the job is done). Married couples have been known to share ministry in this way. The advantage to each individual in a joint ministry, on the other hand, is that there is no such shared liability, but each has only their own duties to fulfil. Either will remain in post when the other leaves, leaving (in our example above) a 50% part-time vacancy – and this could not happen in a shared ministry. The disadvantage of joint ministry is that only one post may be designated as Moderator of the Kirk Session at any given time, so it takes quite an effort on all sides to achieve a genuine sense of equality of posts.

CHAPTER EIGHT – OTHER FORMS OF MINISTRY

October 2009

All queries on issues relating to the professional ministries of the Church should be addressed to the Ministries Council, which is preparing text to appear here in future.

CHAPTER NINE - PLANNING, APPRAISAL AND ADJUSTMENT

August 2009

The planning and adjustment of local parish resources is regulated entirely by Act VII 2003, which describes the normal chronological order of the steps taken (though some of these are iterative, because it is a rolling form of planning). Its predecessor, Act IV 1984, should not be followed unless very unusual local circumstances require a small part of it to be used in relation to certain charges.

1. Presbytery Planning (Sections 3-9 of Act VII)

The chief difference between the old legislation and the new is that the planning process is based on a rolling ten-year plan including every charge in the Presbytery (whereas the old process could make no definite plans except for vacant charges, and only sketched general intentions for the larger picture). Put another way, in the old system 'appraisal' normally took place close to the actual moment of adjustment; whereas in the new, the charge's needs are under routine appraisal, with a sense of future developments normally being quite clear long in advance of the moment of adjustment (which still often falls during a vacancy, because ministers' rights are conserved during their tenure). In the new system the Plans have been initially drawn up, and approval (if necessary after some negotiation) obtained for them from the General Assembly's committee (now located within the Ministries Council). That approval will be renewed periodically for plans in general, and specifically required for any adjustment action that exceeds the resource-level anticipated in the plan for that charge. However, straightforward implementation of a plan through adjustments, or permitting vacant congregations to call ministers, can now proceed without further central consents being needed.

Currently, a Presbytery's Plan presents the resource-needs under three headings:

1.1 Human Resources

Following a national exercise in the allocation of the resources of the various professional ministries of the Church, each Presbytery has an allocation to be utilised locally, and considerable discretion. There may be a mix of ordained and other ministries; the adjustment of charges may be traditional or radically new; and staffing may in some cases attach not to a conventional parish charge but – say – to the Presbytery as a whole, or to a sector ministry or chaplaincy of some kind. These decisions largely determine the overall shape of the Plan, and the impact on the charges within the bounds.

1.2 Buildings

Projected needs for heritable resources are now included, so that Presbyteries have a long-term picture available when making decisions about the repair or renovation of buildings. With a Plan fully in place, it should be easier to make realistic and responsible decisions about the management of these resources, with expenditure prioritised in places where a long-term future is anticipated.

1.3 Gaelic provision

The opportunity has been recently taken to bring up-to-date and formalise the system for classifying the types of charge where Gaelic worship is provided. This information now appears in Presbytery Plans.

2. Adjustment (Sections 10-12)

With a fully-worked-out plan in place (if not for the whole Presbytery, then at least covering the charge in question as the moment of adjustment approaches) it should be possible to work out quite far in advance the intentions for the actual changes (if any) anticipated during the life-time of the plan. The Presbytery's committee will bring together the substantive adjustment intentions (the forms of adjustment they plan to utilise) with a toolbox of means of achieving those changes (instruments of adjustment) to produce a smooth transition from one state to another, if necessary through stages or over a period of time.

2.1 Forms of Adjustment

These are listed in the Act, and are nowadays limited to types of permanent change to: the number of congregations serving a geographical area (through unions); the number of separate charges working together for certain purposes (parish groupings); the number of worshipping communities found in larger parishes (normally defined by the number of buildings used each week); the number of congregations ministered to by one minister or team of ministers (linkages); and the number of ministers in such a team. The permanent changes may be effected by one-off events like: the relocation of a congregation in a different territorial area (transportation); the establishment of a New Charge (see below) in a selected area; or the dissolving of a historic arrangement (dissolution). The plan will describe the intended state of any current charge at the end of ten years, always in terms of these forms of adjustment where change is anticipated.

While Parish Grouping is the wholly new form of adjustment in the current legislation, the form that has been increasing in use under the new arrangements is the 'Deferred' form of Union or Linkage. Here the adjustment is agreed and initially implemented when one of the congregations is vacant but the other(s) is/are not yet vacant. For the purposes of filling the vacancy the congregations conduct business as if the whole charge is vacant, working together to call the new minister and celebrating together in his or her induction. However, the minister can of course begin work only in the congregation that actually had been vacant, succeeding to the other element(s) of the charge at the end of their current ministry/ies. Normally this point of final maturity of the adjustment is marked by a service of introduction. This form of adjustment is in fact a powerful instrument to achieve change that in the old system would have been thwarted by circumstances that happened not to coincide conveniently enough for the Presbytery's intentions. Care should be taken to avoid using the word 'deferred' in its ordinary meaning, to refer to any adjustment not being implemented yet for some reason; whereas in this technical use of the term it refers to an adjustment that is implemented immediately, but with a staged effect over time.

2.2 Instruments for Adjustment

Another major innovation in the current legislation is the distinction between these forms of adjustment and mechanisms which are not themselves 'forms' of adjustment, but provide the Presbytery with tools it can use to get to a point of adjustment that is (for all sorts of possible reasons) some distance away, or achieve an adjustment that would otherwise have been obstructed by a technicality.

There are three instruments available to the Presbytery:

2.2.1 Reviewable Tenure – this form of ministerial tenure gives the Presbytery the option in due course of ending a ministry to enable adjustment to take place. A clear trigger point will be built into the Basis of Reviewable Tenure (either a period of time or the occurrence of a particular event, which is almost always the beginning of a vacancy in a key neighbouring charge), and the Presbytery will then conduct a review, which may result in the minister being given six months' notice of the termination of his or her tenure. The review takes place because termination of the tenure may not be inevitable, if circumstances turn out at the point not to require it and the congregation and minister are willing to extend tenure for a further (reviewable) period. An even better result - the upgrading of an individual's tenure from Reviewable to Full Tenure - requires the approval of the congregation, since the initial Call had been such a qualified one. However, in some places congregations are asked to approve at the outset the possible upgrading of a Reviewable Tenure (in situations where there is optimism that the need for Reviewable Tenure may be very temporary). This clever technique is not mentioned in the Act, is known as 'conformable tenure', and has been used especially in the early stages of the current system of planning. It should be stressed, however, that imaginative use of Deferred Unions and Linkages should greatly reduce the need to use Reviewable Tenure, which normally has the effect of making it more difficult to recruit a minister than if the charge had Full Tenure.

2.2.2 Continued Vacancy – here a vacant charge is not given permission to fill its vacancy, normally because it is anticipated that longer-term developments will eventually make adjustment possible. Where the congregation is quite large, a Deferred Union may often be a more satisfactory way to proceed. Where it is quite small, a part-time ministry might be appropriate, rather than a vacancy. But where it is a very small charge, Continued Vacancy may be the most appropriate decision, and indeed may have to continue for many years.

2.2.3 Transference – not to be confused with the transportation of a congregation to serve a different piece of territory, transference simply declares the charge on the very edge of a Presbytery area to belong within the adjacent Presbytery by moving that Presbytery's boundary to include it. Though the act of transference itself does not of itself involve any other change, it is normally used to enable some other adjustment to be effected with a neighbouring charge already located in the new Presbytery.

2.3 Basis of Adjustment (Section 13)

'Basis of Adjustment' is a generic term, covering any written Basis effecting any form or instrument of adjustment (e.g. 'Basis of Union', 'Basis of Parish Grouping', 'Basis of Reviewable Tenure').

2.4 Decisions and Appeals (Section 14)

The production and adoption of any Basis of Adjustment can be thought of as a single act of Presbytery decision-making surrounded by a series of consultative loops. The order of events is as follows:

2.4.1 Representatives of the Presbytery work with office-bearers of the congregation to produce the text of the Basis. There is no formal decision-making at this stage, so there is no need, for instance, to have a Kirk Session vote. However, it is vital for the office-bearers to engage with this consultative process, even if the general principle of the adjustment is abhorrent to them; after all, this does at least give them a chance to influence the detail of the proposal, and so mitigate the effects of the decision if they are unable to prevent the adjustment from happening.

2.4.2 The text is put to an indicative vote by the congregation, to help to inform the Presbytery's decision. This consultation does not have any final effect, and so is not a process that can be appealed.

2.4.3 The Presbytery makes its decision, having considered the process to date and cited relevant parties for their interests (as required by Act VII).

2.4.4 Where the decision has the effect of increasing the resource-level stated in the Plan, concurrence must be sought from the General Assembly's committee, and reported back to the Presbytery, before its decision becomes final.

As for Appeals, these may normally only be taken after the final decision-stages described above. An interested party (e.g. a Kirk Session) may intimate intention to appeal at the earlier, planning/appraisal stage; but usually such an Appeal is merely noted, not heard, and the point of actual adjustment is awaited and a renewed appeal (including, if the Appellants wish, the grounds of the original objection) is prepared at that stage, so that the principle and its implementation are reviewed together. However, a Presbytery may ask the Commission of Assembly to hear the earlier appeal straight away, if its planning work would be obstructed by not having a resolution to that dispute. For example, if a planning decision in respect of congregation A (which is not vacant) could have knock-on implications for the adjustment decisions required in respect of congregation B (which has reached that stage because it has become vacant), the Presbytery may require to know the outcome of the appeal from Kirk Session A before it can make any further decisions for B; and in that case it would transmit the Appeal to the Principal Clerk's office for immediate action.

3. Specialist Parish Arrangements:

3.1 New Charge Development (Act XIII 2000 amended by Acts V and VIII 2003 and Act VII 2004)

The procedure for the setting up of a New Charge is contained in Sections 2-9 of the Act. The appointment of a minister lies with the Assembly's Ministries Council in consultation with the local Presbytery and also with the congregation if it has already been formed.

Where there is no congregation, the Council nominates a minister and invites the Presbytery to sustain the appointment. If the Presbytery agrees to do so, the Presbytery shall induct on the basis of reviewable tenure (Section 10 and 11 and Appendix A). If the nominee is unacceptable, a second nomination is made by the Council. If the second nomination is also unacceptable, a small committee of Presbytery along with the Council shall jointly select a suitable minister, who shall be appointed.

Where a congregation exists, the Nominating Committee shall consist of four members of the Council, one Presbytery representative, one New Charge Commission representative, and representatives from the congregation between three and seven in number according to the size and resources of the congregation. The convener of the Commission shall arrange for the appointment of the congregational representatives. Candidates shall conduct worship in the presence of the Mission Developments Facilitator, the congregational representatives and one other representative of the Nominating Committee. The interviewing group shall submit a written report to the Nominating Committee. Candidates shall be interviewed by the whole Nominating Committee. The Committee shall appoint a nominee who shall be elected and called by the congregation in the regular manner

in terms of Sections 21-25 of Act VIII 2003. If the Presbytery approves the appointment, it shall induct on the basis of reviewable tenure (Section 12 and Appendix B). The minister appointed shall be responsible to the Council for the development of the charge, and to the Presbytery for life and doctrine (Sections 14 and 15).

A review of the operation of the New Charge shall be carried out by the Council in consultation with the Planning and Development Committee and the Presbytery. An interim review will take place at the beginning of the third year. A further review will be carried out six months prior to the fifth anniversary. If the charge be then deemed by the Presbytery and the Council to be non-viable, six months' notice of termination of tenure shall be given. Reviews shall be carried out by two representatives of the Council, one New Charge minister from another Presbytery, and one Presbytery representative. A report of the review shall be submitted to the Council. If the Council deems the charge viable, it shall request the concurrence of the Planning and Development Committee that the charge and appointment continue. If the Council deems the charge non-viable, the Presbytery shall reappraise the situation, its decision being subject to the concurrence of the Planning and Development Committee (Section 20). A second interim review will be carried out at the beginning of the eighth year and a final strategic review carried out six months prior to the tenth anniversary.

It shall be open to a New Charge to apply for full status at any time, normally after it has been in existence for five years and in any event before the eleventh anniversary of its constitution. For the procedure to be followed in raising a New Charge to full status see Sections 26-35 of the Act.

A congregation which already has full status may choose to relinquish its full status and become a (changed status) New Charge either in the same or in a different place, if its circumstances make this desirable (Sections 1 and 5).

3.2 Congregations of Deaf People

While local churches are encouraged to provide services for the Deaf by making sermons and prayers available in print and by the use of signing whenever possible, there are specifically 4 congregations of deaf people - in Aberdeen, Edinburgh, Glasgow, and the Ayrshire Mission for the Deaf - served by 3 ministers, one in Aberdeen, one in Edinburgh, and one for Glasgow and Ayrshire, operating under Reg. 3, 1998. Any additional congregation shall be served by one of these 3 ministers.

These ministers shall be appointed by the Ministries Council as Community Ministers and shall be introduced, not inducted, to their appointments. The congregation shall be consulted when an appointment is called for. All property shall be the sole responsibility of local Trustees. Salaries and related ministerial costs shall be met from the budget of the Mission and Discipleship Council. The Presbytery shall consult with the congregation as to the contribution to be made to the Ministries and Mission Contributions. The minister shall be entitled to a seat in Presbytery, and the Kirk Session shall appoint a representative elder. Even if there are several places of worship within the bounds of different Presbyteries, the congregation and its minister shall be subject to one Presbytery only.

Earlier legislation has been repealed in the light of these new arrangements, but Act XXIII 1969, which provides for the acceptance of those who may be ordained to a

restricted ministry to the deaf and dumb, is still in force. Such restriction can be removed only by the General Assembly.

3.3 Shetland Arrangements

The General Assembly of 2000 approved Revised Regulations (Reg. 2 2000) for Ministerial Staffing in the Presbytery of Shetland which were originally introduced in 1981. The Regulations were further revised by Reg. 6 2007.

The Assembly have appointed a Committee to supervise all aspects of the arrangements. The Supervisory Committee consists of the Convener and Secretary of the Planning and Development Committee of the Ministries Council (or any nominated alternates), and two ministers and two elders appointed by the Presbytery, one being the Presbytery Clerk. The Convener of the Planning and Development Committee will be Convener of the Supervisory Committee, and will have both a deliberative and a casting vote (Section 3).

When a vacancy arises, but also three months prior to the end of a minister's period of contract, the matter shall be referred to the Presbytery's Committee on Parish Appraisal, and in every case normal adjustment procedure shall be initiated. When subsequently it is agreed to fill a vacancy, the Ministries Council shall nominate four representatives who, together with the Clerk of the Presbytery of Shetland and up to three representatives of each congregation concerned, shall bring forward a nomination for appointment by the Council. Prior to confirming an appointment the Council shall invite the congregation(s) concerned to indicate whether or not the proposed appointee is acceptable. Thereafter the normal procedure for the settlement of a minister shall be followed as closely as possible (Sections 5 – 7).

If after twelve months no appointment has been made, the Council, in consultation with the Supervisory Committee, have powers to appoint a minister for an initial period of up to five years (Section 8).

A minister appointed in terms of these Regulations, unless appointed in terms of Section 8, has to undertake to serve for five years in the first instance, and he or she shall not be eligible to take up another charge or appointment prior to the expiry of that period without the consent of the Presbytery after consultation with the Council. At the end of the contract period the minister shall indicate to the Supervisory Committee whether or not he or she wishes to continue to serve in Shetland for a further agreed period. At the same time, and if no staffing change is required in the interests of adjustment, the Presbytery, after consultation with the Kirk Session(s), shall indicate to the Council whether it wishes the minister to be re-appointed or not. The Council shall not make a re-appointment if any party expresses unwillingness (Sections 9 – 13).

If at the end of a contract period a minister wishes to continue to serve in Shetland and an appointment requires to be made in a charge where adjustment has just been effected, the Council may propose that minister for appointment, subject to the acceptance of the congregation(s) (Section 14).

At the end of a contract period a minister returning to the mainland shall receive the Minimum Stipend for up to a period of one year or until securing another charge or appointment, whichever is the shorter period. If no new charge or appointment has been secured by then, the Council shall be deemed to have fulfilled in full its responsibilities (Sections 15 – 16).

These Regulations (which include other special financial provisions and which apply also to Associate or Community Ministry appointments) may be terminated only by the General Assembly at the instance of the Presbytery or of the Council.

CHAPTER TEN – PROPERTY

October 2009

All queries on issues relating to the property of the Church should be addressed to the General Trustees, which is preparing text to appear here in future.

CHAPTER ELEVEN - FINANCE

1. [Christian Giving](#)
2. [Ministries and Mission Contributions](#)
3. [Endowments and Investments](#)
4. [Legacies and Gifts](#)
5. [Appeals for Funds](#)
6. [Raffles and Games of Chance](#)
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1. Christian Giving

The main source of income for the work of the Church – local, national and global – is the offerings of members. All members of the Church are expected to make an offering of money, as a response to the generous giving of God and a desire to share the gospel through the work of the Church. The recommended ways of giving are by use of offering envelopes (the Freewill Offering scheme) or by bank standing order : these methods of giving encourage committed giving.

As a charity, the Church benefits from the Gift Aid scheme, whereby members who pay tax may sign a Gift Aid Declaration, and the congregation is able to reclaim the tax paid on the money given in their offerings. It is important that the Congregational Treasurer is able to establish an ‘audit trail’ to support the claim for tax recovery. Offering envelopes and bank standing orders provide this ‘audit trail’ : open plate giving does not, as it is impossible to prove from whom the money came.

Detailed information on methods of giving and the administration of these is available from the Stewardship and Finance Department. This department will also provide advice and support in teaching and promoting Christian giving, eg. through a stewardship programme.

2. Ministries and Mission Contributions

For most congregations the largest single item of expenditure is the Ministries and Mission Contribution. The amount asked from each congregation is calculated on the basis of congregational income in the previous three financial years.

Most of each congregation’s contribution is used to support parish ministries throughout the Church of Scotland. Parish ministries include all centrally supported posts, as detailed in approved Presbytery Plans, and may be ministers, deacons or specialist workers. It is no longer the case that each congregation is responsible for the payment of its own minister.

The remaining part of each congregation’s contribution supports the Mission and Renewal work of the Church, and is shared among the Church and Society, Mission and Discipleship, Social Care, Support and Services, and World Mission Councils.

It is important to note that Ministries and Mission Contributions only partially fund the work of the Councils of the General Assembly.

The Ministries and Mission Contribution is a requirement from congregations. Unless there is dispensation from Presbytery, it should be paid monthly throughout the year.

Where dispensation is given, this is only valid for a year at a time.

Further information about Ministries and Mission Contributions is to be found in the Regulations for Ministries and Mission Contributions from Congregations (Regs 1 2009).

3. Endowments and Investments

Some congregations receive stipend endowment income and glebe rents. This money must be used towards the cost of ministry in the parish and is set against the Ministries and Mission Contributions of the appropriate congregations. The General Trustees administer the Consolidated Stipend Fund where stipend endowment capital is invested.

Congregations with Fabric and Reserve Funds are encouraged to invest these in the funds administered by the Church of Scotland Investors Trust. The Investors Trust has an ethical investment policy and does not invest in alcohol, tobacco, gambling or armaments. Contact the Church Offices for further information.

4. Legacies and Gifts

Many of the Church's investments, both at the congregational level and in respect of central funds, are the result of legacies and gifts from members. Where these have been given for specific purposes, they should be placed in restricted funds and only used for these purposes. It is possible to use legacies and gifts for capital projects, unless it is specified that these must be invested and only the income used.

There can be difficulties if legacies and gifts are too restricted in their use. The time may come when this use is no longer possible, or a very restricted use may be something of which the Kirk Session does not approve. "The best advice to those who propose to give to the Church by legacy or gift is that true generosity will not seek to restrict the purposes for which the money may be used." (James L Weatherhead, 'The Constitution and Laws of the Church of Scotland' p.138)

As the Church of Scotland and its congregations are charities, legacies to the Church are exempt from Inheritance Tax.

5. Appeals for Funds

When an appeal or fund-raising event takes place, it is important that the purpose of the appeal or event is clearly stated. Money raised may only be used for the purpose stated, and not for any other purpose. If the money is raised for a particular project and this project does not proceed, the money raised should be returned to the donors : this may be very difficult to achieve.

Other rules in relation to appeals are to be found in Act V of the General Assembly of 1989 (as amended by Act X 2002).

6. Raffles and Games of Chance

The Church does not approve of raffles and games of chance as methods of fund-raising. While these minor examples of gambling may not be a serious social problem, they are not regarded as worthy ways of raising money to enable the sharing of the gospel through the work of the Church.

7. Accountability

As charities the Church of Scotland and its congregations are accountable to the Office of the Scottish Charity Regulator (OSCR) in all financial matters. The requirements of OSCR have been incorporated in the Regulations for Congregational Finance (Regs 2 2008), and these must be adhered to by all congregations. These Regulations largely concern the format, content, independent examination/audit, and approval of Congregational Accounts.

In their stewardship of financial resources the trustees of the congregation are accountable to the members who give the money, and, in view of the guidance sought at the beginning of every church meeting, are accountable to God whose purposes they are here to advance.

CHAPTER TWELVE - DISCIPLINE

August 2009

If it becomes necessary for a court to exercise discipline, certain procedures have to be followed. These reflect legislation (partly of a bygone age and partly as recently as 2001 (Act III as amended)), and also the common law and traditional best practices of the Church.

Certain general principles apply:

1. The object of discipline is "the glory of God, the purity of the Church, and the spiritual good of the offender. It is to be administered in faithfulness, meekness, love and tenderness" (see *Weatherhead* p. 171).
2. Only what is censurable by the Word of God or by some Act of Assembly or universal custom of the Church or a breach of a lawful order of any court of the Church merits action on the part of the Church.
3. Scandalous conduct, undetected for five years, should not be judicially examined "unless it be of a heinous nature or becomes again flagrant".
4. The proceedings or judgment of a civil or criminal court can be no substitute for the due process of law in a Church court. They may, however, help the Church to decide on whether or not to begin its own process.
5. A court must not institute any formal process unless and until the accusation is received in writing or is made orally in court with an indication of supporting evidence.
6. Where a scandal is rife (*fama clamosa*), a court can itself act without the need of accusers or informers, and ought so to act.
7. When an accusation is brought before a court, the court must first decide whether it falls to be dealt with by it or by a higher court.
8. Parties and witnesses must be duly cited to appear. Citation shall be by hand or by registered post or recorded delivery to the last known address.
9. An accused shall be supplied with details of the accusation, and with the names of the prosecution's witnesses.
10. An accused has a right of access to all documents in possession of a court.
11. All documents in a case are to be listed and numbered in an Inventory of Process.
12. A court has power to summon any person within its bounds as a party, a witness, or otherwise, and to examine them.
13. Parties may have the assistance of Counsel and/or Solicitor at any time including an appeal. Parties shall not themselves be heard if Counsel and/or Solicitor appear for them.
14. A record of investigatory proceedings, including witness statements and a transcript or recording of evidence given at any hearing, shall be kept in a Record Apart.
15. In dealing with an accusation, the charge must first be shown to be relevant. If the court finds that the charge is not relevant, it shall dismiss the charge. If the court finds that the charge is relevant, the court may then proceed to proof.
16. After evidence for both sides has been led and parties have addressed the court, parties are removed and the court proceeds to discuss its judgment.
17. The standard of proof is the balance of probabilities ie. the Scottish civil standard.
18. A judicial censure may be imposed only if a fault has been confessed or proved.
19. When a decision on guilt has been reached, a plea in mitigation may be made by the accused.
20. In proceedings under Act III 2001 the censures of the Church are:-

- (a) **Reprimand.** This denotes disapproval of particular behaviour, accompanied by counsel regarding future conduct.
- (b) **Suspension of Status.** Either for a fixed period with automatic restoration the Presbyterial Commission. Restoration is achieved by submission of a petition by the individual concerned.
- (c) **Removal of Status.** Restoration of status in these circumstances calls for compliance with Act IX 2002 (as amended).

Administrative Suspension: Although not a censure of the Church, anyone under the jurisdiction of a Presbytery may be instructed by Presbytery not to perform any of the functions of their office until proceedings are finally disposed of.

21. When a case is over -

- (a) if censure has been imposed, the first minute of the Record Apart, the summary of each of the charges, and the final judgment are to be engrossed in the ordinary Minute Book;
- (b) if the accused has been acquitted, the Record Apart and all other papers in the case are to be sealed up in the presence of the court, docketed with the name of the congregation and the date of the final judgment, kept *in retentis* for five years, and then destroyed.

1. Discipline of Ministers, Deacons, Licentiates and Graduate Candidates

The discipline of those in the ordained ministries of the Church, and those awaiting ordination, is entirely regulated by Act III 2001. In the very unusual event of circumstances arising that trigger the use of the Act, it is vital that all parties observe the provisions of the Act closely; and it is therefore not appropriate for a paraphrase of its provisions to appear in these materials. The Act appears on the Church's web-site, along with all other legislation of the General Assembly; while a practical commentary for the use of legal representatives may be found in *The Legal Systems of Scottish Churches* (Dundee University Press, 2009).

2. Discipline of Office-bearers and others

It is for a Kirk Session to discipline, where necessary, its communicant members, adherents, and office-bearers. An Overture sent down under the Barrier Act by the General Assembly of 2009 may have the effect of making the Presbytery the court of first instance in the case of elders, readers and other office-bearers, but the principles outlined in this chapter will still apply in the event of that change.

In marked contrast to earlier times, when much of the business of Kirk Sessions was disciplinary, Kirk Sessions nowadays deal pastorally rather than judicially where matters of discipline are concerned.

Frequently the first indication of possibly censurable conduct comes when the matter is raised with the minister, Session Clerk, or some office-bearer by word of mouth. When this happens, it may be enough, and it may also be preferable, for the party in question to be spoken to privately and warned as to future conduct. If this private admonition is accepted, no further action needs to be taken. If, however, such pastoral approach fails, the matter will have to be brought formally to the notice of the Kirk Session.

The Kirk Session may invite the accused to indicate within thirty days a willingness to submit to discipline, or to stand trial if the charge is denied.

If the accused agrees to submit to discipline, the Kirk Session may remit to the Moderator, possibly also with one of the elders, to deal with the accused, and to report back to the Session who can then dispose finally of the matter.

If the invitation to be disciplined is declined, the Kirk Session shall suspend the accused from privileges until he or she does submit to discipline or until the Kirk Session is otherwise satisfied.

If the accused is an office-bearer, he or she is to be suspended from office as well as from privileges while the charge is under consideration.

3. Acts anent Bullying and Discrimination

The General Assembly of 2007 passed two Acts designed to provide protection for ministers and others subjected to “bullying” or “discrimination, harassment and victimisation” by individuals or by courts or Committees of the Church.

3.1 The Act anent Bullying (Act IV 2007) requires allegations of bullying to be submitted to the Presbytery within three months. Unless the allegation calls to be dealt with under Act III 2001 (Discipline of Ministers, etc.) or under civil employment law, the Presbytery Clerk shall within 7 days remit the matter to the Presbytery’s Superintendence Committee and shall advise the Presbytery accordingly. The Committee shall within 7 days of receipt of the complaint appoint a group of three members of Presbytery outwith the Committee’s membership (or two such members and one from a neighbouring Presbytery) (Section 5).

The Group shall meet with all parties to ascertain the circumstances and to try to effect mediation or conciliation (Section 7). The Group shall report the outcome to the Superintendence Committee which in turn shall report to the Presbytery. If the view of the Committee is that the complaint has been resolved, the Presbytery need take no further action (Section 8).

If, having met with the parties, the Group decides against attempting mediation, it shall through the Superintendence Committee give its reasons to the Presbytery, which may instruct it to make a fresh attempt (Section 8).

If mediation or conciliation is not successful, the Presbytery shall appoint a Committee whose first task shall be to decide whether or not to carry out an investigation having regard to all the relevant facts and in particular (a) the *bona fides* of the complainer, (b) any representation made by the alleged bully, and (c) the gravity of the alleged offence. The standard of proof throughout the proceedings shall, as always, be the balance of probabilities (Section 10(1)).

If the Committee decides against carrying out an investigation, the Presbytery may issue an instruction to the alleged bully regarding his or her conduct, any disobedience of which may be treated as a disciplinary offence (Section 10(3)).

If the Committee decides to carry out an investigation, in addition to notifying the Presbytery and the alleged bully, the Committee shall notify the Legal Questions Committee which shall appoint a legally qualified assessor to assist. The Presbytery shall provide pastoral support for both parties, and may impose an administrative suspension from office (Section 11). The Committee shall minute its proceedings in a Record Apart (Section 12).

The Committee may resolve that there is no case to answer, in which case the Presbytery shall recall any administrative suspension (Section 14).

If the Committee decides to proceed further, it shall submit a detailed report to the Presbytery stating its findings with a recommendation as to the disposal of the case, and whether in its judgment there has been any harassment or victimisation. The following censures may be imposed by the Presbytery :-

- (a) an instruction regarding future conduct, disobedience constituting the disciplinary offence of contumacy; (b) reprimand together with counsel regarding future conduct; (c) removal from office; (d) deprivation of status as an elder (Section 17).

Any appeal – but only on one or more of the grounds stated in Section 19 – shall be to the Commission of Assembly.

No legal expenses shall be met from the funds of the Church (Section 20).

3.2 The Act anent Discrimination (Act V 2007) begins with its definition of discrimination, harassment, and victimisation, and by stating that the Act covers “age, gender, marital status, colour, racial group, ethnic origin, national origin, nationality, disability, and sexual orientation”.

Proceedings shall follow those that apply to the Act anent Bullying (cf. Sections 5-20, 22-26 with Sections 2-21 of Act IV 2007).

Under this Act the Presbytery shall always take into consideration whether there has been any element of (a) harassment or (b) victimization of the complainer after bringing the complaint (Section 21), and shall accordingly adjust its severity in disposing of the case.

APPENDICES

(A) ARTICLES DECLARATORY OF THE CONSTITUTION OF THE CHURCH OF SCOTLAND IN MATTERS SPIRITUAL

I. The Church of Scotland is part of the Holy Catholic or Universal Church; worshipping one God, Almighty, all-wise, and all-loving, in the Trinity of the Father, the Son, and the Holy Ghost, the same in substance, equal in power and glory; adoring the Father, infinite in Majesty, of whom are all things; confessing our Lord Jesus Christ, the Eternal Son, made very man for our salvation; glorying in His Cross and Resurrection, and owning obedience to Him as the head over all things to His Church; trusting in the promised renewal and guidance of the Holy Spirit; proclaiming the forgiveness of sins and acceptance with God through faith in Christ, and the gift of Eternal life; and labouring for the advancement of the Kingdom of God throughout the world. The Church of Scotland adheres to the Scottish Reformation; receives the Word of God which is contained in the Scriptures of the Old and New Testaments as its supreme rule of faith and life; and avows the fundamental doctrines of the Catholic faith founded thereon.

II. The principal subordinate standard of the Church of Scotland is the Westminster Confession of Faith approved by the General Assembly of 1647, containing the sum and substance of the Faith of the Reformed Church. Its government is Presbyterian, and is exercised through Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies. Its system and principles of worship, orders, and discipline are in accordance with "The Directory for the Public Worship of God", "The Form of Presbyterial Church Government", and "The Form of Process", as these have been or may hereafter be interpreted or modified by Acts of the General Assembly or by consuetude.

(N.B. The words "Provincial Synods" were deleted as a consequence of this Article being amended by Act V, 1992).

III. This Church is in historical continuity with the Church of Scotland which was reformed in 1560, whose liberties were ratified in 1592, and for whose security provision was made in the Treaty of Union of 1707. The continuity and identity of the Church of Scotland are not prejudiced by the adoption of these Articles. As a national Church representative of the Christian Faith of the Scottish people it acknowledges its distinctive call and duty to bring the ordinances of religion to the people in every parish in Scotland through a territorial ministry.

IV. This Church, as part of the Universal Church wherein the Lord Jesus Christ has appointed a government in the hands of Church office-bearers, receives from Him, its Divine King and Head, and from Him alone, the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution and membership of its Courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its ministers and other office-bearers. Recognition by civil authority of the separate and independent government and jurisdiction of this Church in matters spiritual, in whatever manner such recognition be expressed, does not in any way affect the character of this government and jurisdiction as derived from the Divine Head of the Church alone, or give to the civil

authority any right of interference with the proceedings or judgments of the Church within the sphere of its spiritual government and jurisdiction.

V. This Church has the inherent right, free from interference by civil authority, but under the safeguards for deliberate action and legislation provided by the Church itself, to frame or adopt its subordinate standards, to declare the sense in which it understands its Confession of Faith, to modify the forms of expression therein, or to formulate other doctrinal statements, and to define the relation thereto of its office-bearers and members, but always in agreement with the Word of God and the fundamental doctrines of the Christian Faith contained in the said Confession, of which agreement the Church shall be sole judge, and with due regard to liberty of opinion in points which do not enter into the substance of the Faith.

VI. This Church acknowledges the divine appointment and authority of the civil magistrate within his own sphere, and maintains its historic testimony to the duty of the nation acting in its corporate capacity to render homage to God, to acknowledge the Lord Jesus Christ to be King over the nations, to obey His laws, to reverence His ordinances, to honour His Church, and to promote in all appropriate ways the Kingdom of God. The Church and the State owe mutual duties to each other, and acting within their respective spheres may signally promote each other's welfare. The Church and the State have the right to determine each for itself all questions concerning the extent and the continuance of their mutual relations in the discharge of these duties and the obligations arising therefrom.

VII. The Church of Scotland, believing it to be the will of Christ that His disciples should be all one in the Father and in Him, that the world may believe that the Father has sent Him, recognises the obligation to seek and promote union with other Churches in which it finds the Word to be purely preached, the sacraments to be administered according to Christ's ordinance, and discipline rightly exercised; and it has the right to unite with any such Church without loss of its identity on terms which this Church finds to be consistent with these Articles.

VIII. The Church has the right to interpret these Articles, and, subject to the safeguards for deliberate action and legislation provided by the Church itself, to modify or add to them; but always consistently with the provisions of the first Article hereof, adherence to which, as interpreted by the Church, is essential to its continuity and corporate life. Any proposal for a modification of or addition to these Articles which may be approved of by the General Assembly shall, before it can be enacted by the General Assembly, be transmitted by way of overture to Presbyteries in at least two immediately successive years. If the overture shall receive the approval, with or without suggested amendment, of two-thirds of the whole of the Presbyteries of the Church, the Assembly may revise the overture in the light of any suggestions by Presbyteries, and may transmit the overture when so revised to Presbyteries for their consent. If the overture as transmitted in its final form shall receive the consent of not less than two-thirds of the whole of the Presbyteries of the Church, the General Assembly may, if it deems it expedient, modify or add to these Articles in terms of the said overture. But if the overture as transmitted in its final form shall not receive the requisite consent, the same or a similar proposal shall not be again transmitted for the consent of Presbyteries until an interval of five years after the failure to obtain the requisite consent has been reported to the General Assembly.

IX. Subject to the provisions of the foregoing Articles and the powers of amendment therein contained, the Constitution of the Church of Scotland in matters spiritual is hereby anew ratified and confirmed by the Church.

(B) THE BARRIER ACT (1697)

The General Assembly, taking into their consideration the Overture and Act made in the last Assembly concerning innovations, and having heard the report of the several commissioners from Presbyteries to whom the consideration of the same was recommended, in order to its being more ripely advised and determined in this Assembly;

and considering the frequent practice of former Assemblies of this Church, and that it will mightily conduce to the exact obedience of the Acts of Assemblies, that General Assemblies be very deliberate in making of the same, and that the whole Church have a previous knowledge thereof, and their opinion be had therein, and for preventing any sudden alteration or innovation, or other prejudice to the Church, in either doctrine or worship, or discipline, or government thereof, now happily established;

do, therefore, appoint, enact, and declare, that before any General Assembly of this Church shall pass any Acts, which are to be binding Rules and Constitutions to the Church, the same Acts be first proposed as overtures to the Assembly, and, being by them passed as such, be remitted to the consideration of the several Presbyteries of this Church, and their opinions and consent reported by their commissioners to the next General Assembly following, who may then pass the same in Acts, if the more general opinion of the Church thus had agreed thereunto.

(C) THE FORMULA

I believe the fundamental doctrines of the Christian Faith contained in the Confession of Faith of this Church.

I acknowledge the Presbyterian government of this Church to be agreeable to the Word of God, and promise that I will submit thereto and concur therewith.

I promise to observe the order of worship and the administration of all public ordinances as the same are or may be allowed in this Church.