

GUIDANCE NOTES IN CONNECTION WITH THE DISSOLUTION OF CONGREGATIONS

The dissolution of a Congregation terminates its existence and, in general, means that any legacy left to the Congregation which has not yet become payable is lost. It can also produce difficulties with regard to the titles of heritable properties and properties and funds held which are subject to third party trusts. The union of Congregations, on the other hand, usually produces no such difficulties, as neither of the uniting Congregations loses its legal identity. Once the Congregation is dissolved, there still may remain a surprisingly large number of loose ends to be tied up connected with the settlement of bills, ongoing maintenance of properties yet to be disposed of, the closing of Congregational Accounts. Such issues can become problematical as office-bearers move on to other Congregations and inevitably feel less motivated to retain any role concerning the affairs of the former Congregation. Members of the Presbytery on whom the responsibility for supervising the winding up of the Congregation devolves, may find it hard to access the necessary information to enable them to carry out their tasks thoroughly. There may, in particular, be difficulties in supervising heritable property yet to be sold which can inevitably become the subject of vandalism. For all of these reasons, therefore, dissolution should only be contemplated as a last resort. Where it is, however, eventually decided upon, a detailed Basis requires to be drawn up and agreed. The draft Basis (a Model for which is annexed) requires to be approved by the following:-

1. The Kirk Session.
2. The Financial Board of the Congregation (if separate from the Kirk Session).
3. The Congregation.
4. The Presbytery.
5. The General Assembly's Ministries Council.
6. The General Trustees.

The date for dissolution is as appointed by the Presbytery and, before this date is fixed, the Presbytery Clerk should check that all necessary steps in relation to the transfer of the title of heritable property and the re-organisation of trusts have been completed. Arrangements should also be made for a final closing service to give thanks for the life and work of the Congregation.

HERITABLE PROPERTY

This is now governed by Regulations 2, 1996 (it being considered that the provisions of GA Act XXVI, 1933 can be regarded effectively as being superseded). The Regulations provide that any heritable property held by or for a Congregation which is to be dissolved is, if not already vested in the General Trustees, subject to the Trustees' concurrence, to be transferred to them prior to the dissolution. The General Trustees require then to dispose of it. Any accumulated shortfalls in contributions to central funds to the extent that these are unjustified and to the extent that they cannot be met from the free moveable assets of the Congregation, fall then to be deducted from the net proceeds of the redundant heritable property. The balance remaining is paid into the Central Fabric Fund unless there is any agreement to the contrary by the General Trustees and the Ministries

Council or either body refers the matter to the General Assembly. These provisions, being mandatory, are not variable by either of the Congregation or the Presbytery. The sale of redundant property will be carried out by the Church's Law Department. Prior to dissolution, it would be very helpful if a person or a small team of people, either from the Presbytery or the former Congregation, can be identified, who are willing to keep an eye on the property and also undertake the task of showing it to viewers. It should be noted that in the case of Manses, insurance cover is voided after 30 days unless certain conditions are complied with, including the inspection of the property on a weekly basis. In the case of empty Churches and Halls, only limited insurance cover can be obtained.

MOVEABLE PROPERTY AND FUNDS

Subject to it being the firm expectation that there will be surplus arising after all the debts of the Congregation have been met (including shortfalls), it is, in the first instance, for the office-bearers of the Congregation and the Congregation itself to propose the destination of such property and funds, subject to the recipients being Church of Scotland bodies or agencies as is required in terms of the Act anent Church Finance. There have, unfortunately, been cases in the past where in the period leading up to the dissolution, office-bearers, in good faith and with the best of intentions, have dispersed funds to good causes outwith the Church of Scotland. There have also been cases - fortunately very few - where valuable property has been "misaid". Those monitoring the position within the Presbytery require to be alert to the possibility of such difficulties. It is particularly important that the required position should be spelt out to local office-bearers in detail at the earliest possible stage. Appropriate arrangements should be put in place to ensure the preparation and auditing of the final Accounts of the Congregation. So far as ecclesiastical furnishings and fittings are concerned, it is often possible for these to be donated to another Church of Scotland Congregation and the Committee on Church Art and Architecture, who will, in any event, be asked to inspect the Church and advise about fitments prior to its sale, can often assist. In the case of assets which are not of significant value, there can be some flexibility as to their destination and, indeed, in the past, there have been cases where, with the approval of Presbytery, ecclesiastical fittings and furnishings have been gifted to non-Church of Scotland Congregations.

CONGREGATIONAL TRUSTS

Trusts administered by Congregations fall generally into two categories. Firstly, there are property and funds deriving from bequests, where the testator has directed that these be used for a particular purpose in connection with the Congregation. Secondly, there are Trusts whose purposes are for the Parish generally. A traditional "Poor Fund" would be an example. Depending on the terms and purposes of the Trust and its size, it may be possible for it to be transferred or re-organised in terms of the Small Trust legislation enacted in 1990. Alternatively, other arrangements may be necessary. It is recommended that legal advice is sought at the earliest possible opportunity regarding all Trusts and bequest funds.

ENDOWMENTS FOR STIPEND

Unless there is an agreement by the General Trustees and the Ministries Council to the contrary or either body refers the matter to the General Assembly, such endowments are allocated to the Minimum Stipend Fund.

TERMS FOR RETIRING MINISTER

Any lump-sum payment to a retiring Minister and any pension enhancement must, of course, be in accordance with the terms and conditions set out in Section 12(3) of Act VII, 2003. In the case of a Congregation being dissolved, the cost falls to be met, in the first instance, from the moveable property and funds of the Congregation but if these are insufficient, the outlay may be refunded from the proceeds of the sale of heritable property, including existing holdings in the Consolidated Fabric Fund. Similarly, in a case involving an enhancement of pension, if the moveable funds of the Congregation are insufficient, the cost of provision falls to be met by the Ministries Council. In either event, both the General Trustees and the Council should be consulted when the arrangements for dissolution are being negotiated.

MODEL BASIS OF DISSOLUTION

Basis of the Dissolution of the Congregation of _____ in the Presbytery of _____

1. **Act of Dissolution:** the Congregation of _____ shall be dissolved as at a date to be appointed by the Presbytery of _____
2. **Pastoral Oversight:** *[insert details of how the Presbytery proposes to deal with the pastoral care of the members. Although other arrangements are possible, the following has been the usual provision in recent years:-]*

Prior to dissolution, the Kirk Session shall provide the Presbytery Clerk with a list of the names and addresses of communicant members and shall issue to each such member a Certificate of Transference. Notices of Removal shall then be served by the Presbytery Clerk to the Ministers of the Parishes of residence of the said members, with an instruction to provide due pastoral care.

3. **Territorial Responsibility:** *[insert details as to the reallocation of the parochial area. A possible clause would be as follows:-]*

The parochial area of _____ shall be incorporated within the Parish of _____ and the boundary of the extended Parish shall be recorded by the Presbytery.

4. **Minister:** *[Here, as applicable, detail the arrangements being made with any retiring Minister]*

5. **Heritable Property:** *[The following is an example of an appropriate clause:-]*

The titles of the Church and Hall are vested in the General Trustees whilst the titles of the Manse are vested in local Trustees. Prior to the date of dissolution, the local Trustees shall transfer the title of the Manse to the General Trustees, who are authorised and empowered:

- (a) to sell, let or otherwise dispose of the Church, Hall and Manse on such terms and conditions as may be approved by the General Trustees in consultation with the Congregational Board of _____ or, after dissolution has been effected, with the Presbytery of _____ ; and

- (b) to transfer the free proceeds of such sale or let, subject to the meeting of any shortfalls of contributions to central funds which the Presbytery has determined to be unjustified (so far as these are not met from the funds referred to in Section *[insert section dealing with disposal of moveable property]* hereof into the Central Fabric Fund.

6. **Moveable Property** *[here detail the arrangements for disposal of:-*

(1) Cash, funds and bank, marketable securities etc.

(2) Fixtures and fittings.

(3) Memorials in the Church building. It is strongly recommended that a Committee be appointed to deal with the arrangements for such items. A possible clause might read as follows:-]

- (a) A Committee consisting of members of the Congregation, together with *[detail representatives of Presbytery either by name or in relation to offices held]* is hereby appointed and vested with the power to deal with the whole furniture, furnishings and corporeal moveable property effeiring to the Congregation. The said Committee shall have powers to make over, in terms appearing appropriate to them (including by way of gift) any such moveable property to other Congregations or agencies of the Church of Scotland, any surplus items being sold and dealt with as in Paragraph (b) hereof.
- (b) The said Committee appointed in Paragraph (a) above is hereby vested with the power to settle any debts due by the Congregation and to deal with the whole cash, funds in banks and marketable securities belonging to or effeiring to the Congregation. All such property will be realised and the net proceeds, under deduction of any debts, shall be transmitted to the General Trustees to be added to the fund referred to in Section *[insert Section number of paragraph dealing with heritable property]* and applied for the same purposes set out therein.

(As indicated in the above Notes, it is possible to nominate other bodies within the Church to benefit from such funds).

7. **Endowments:** The endowments of the charge, if any, shall be transferred to the Minimum Stipend Fund *(after January 2004, the fund should be termed “the National Stipend Fund”)*
8. **Congregational Trusts:** *Detail the arrangements made with respect to Congregational trusts.*