

**THE PRACTICE**  
**OF THE**  
**FREE CHURCH OF SCOTLAND**  
**IN HER SEVERAL COURTS**

**CHAPTER I**

**THE KIRK SESSION: ITS CONSTITUTION, POWERS AND FUNCTIONS**

**PART I: Constitution**

1. ***Composition of Session:*** In each duly organised congregation the minister along with a suitable number of elected elders referred to as Ruling Elders, constitute the Kirk Session. Ruling elders are elected for life, though their membership of a Kirk Session will terminate if they cease to be members of the congregation, or their resignation is accepted, or they are declared to have resigned through long absence from sessional meetings. Life-long tenure of the office of elder may be cancelled as the result of disciplinary procedure.

2. ***New Congregation:*** In the initial stages of organising a congregation the Presbytery may appoint the members of the Kirk Session, designating a minister as Moderator of Session and appointing elders from nearby congregations within the bounds as general assessors. As in a vacancy the minister so appointed is referred to as the interim moderator.

3.1 ***Categories of Congregation:*** Congregations are variously described according to Acts of the General Assembly by whom they are assigned to the care of a Presbytery. The great majority are *duly sanctioned charges* which, upon fulfilment of certain conditions, are entitled to the services of a minister as his sole charge. Others, which depend upon greater support from central funds have special designations. Those whose additional support comes from the Sustentation Fund are called Redevelopment Charges, or Special Arrangement Charges, or District Charges, this last category involving grouping small units not necessarily

## *The Practice of the Free Church of Scotland*

within the bounds of the same Presbytery under the care of one district minister. Those whose additional support comes from the Church Extension Committee, being mainly the result of fairly recent outreach work, are called Church Extension Charges.

3.2 The procedures for erecting and continuing to service those special category charges are liable to modification from time to time and it seems best to refer to the Acts presently in operation. The text of these will be published in the supplement to this volume.

3.3 ***Consolidated Charges:*** Among duly sanctioned charges there is a category designated *consolidated charges*. These result from the union or linkage of neighbouring congregations approved by the General Assembly. The mode of operation within these charges is determined by the Assembly at the time of their consolidation. In the case of linkage there is a plurality of Kirk Sessions and Deacons' Courts, while in a union only one Session and Deacons' Court remains. Where there is a plurality of Sessions, representation in the Presbytery is adjusted according to Act VIII, 1936.

4. ***Preaching Stations:*** Besides those noted above there are small groups meeting regularly for public worship and duly recognised by Presbytery as preaching stations. Though these are not sanctioned charges, it is nevertheless the responsibility of the Presbytery to arrange for the establishment of a Kirk Session to be responsible for the pastoral care of the station, with a minister of the Presbytery being appointed Moderator of the Kirk Session. Such a Kirk Session does not send representation to the Presbytery (Act XIII, 1863).

5. ***Number of Elders:*** It is the responsibility of the Kirk Session to determine when additions to its number are required by the general situation of the congregation and to oversee the election of as many as it deems necessary by the communicant membership of the congregation, in whom the right of election is vested.

6. ***Qualifications for Eldership:*** The qualifications required of Ruling Elders are the following:

They must be men in full communion with the Congregation.

Each of them must have attained the age of twenty-one years.

They must fit the description given in the New Testament of men qualified to exercise spiritual oversight as elders or bishops/overseers.

7. ***Principles of Election:*** In the election of elders two principles must be secured:

7.1 The persons elected must be adjudged by the Kirk Session to be fit for the office of the eldership.

7.2 They must have the support of the free election of a majority of the communicant membership.

## *The Kirk Session*

8. ***Methods of Election:*** There is no single mandated method of electing Ruling Elders. Kirk Sessions exercise their discretion in determining which method will be most generally acceptable locally and occasion least tension and difficulty. The following are some of the methods which honour both the principles stated above. The order of listing is not significant.

8.1 The Kirk Session may call a meeting of the communicant membership of the congregation for the purpose of electing a specified number of new elders. At this meeting names will be proposed (moved and seconded) and upon subsequent voting those securing the required majority identified. From these the Kirk Session select the required number and ascertain their willingness to accept office.

8.2 The Kirk Session may, at a duly called meeting of the communicant membership, propose certain names to them and upon securing a majority agreement proceed to invite those named to accept office.

8.3 The Kirk Session may submit to the communicant membership a list of the names of all male communicants over the age of 21 and ask for the election of a specified number. From the number securing the support of a majority of the communicants the Kirk Session then select the names of those they deem most suitable.

8.4 The Kirk Session may submit to the communicants a list of those whom they deem suitable for office and ask for the election of all or of a specified number.

9. ***Eligibility as Elder:*** A person formerly ordained to the office of the eldership but who, for reasons not involving Church discipline, is not currently a member of a Kirk Session is regarded as retaining the status of an elder. He can become an elder of the congregation in which he holds membership if so elected by the communicants and approved by the Kirk Session.

An ordained Minister who, from any cause not involving Church censure, is without a pastoral charge, is eligible as a Ruling Elder in the Congregation to which he belongs. (With regard to Retired Ministers, see Act IV, 1991).

10. ***Convening Session Meeting:*** Kirk Sessions may be convened at any convenient time provided due notice is given to all members but only in special or urgent cases may meetings be held on the Lord's Day. Meetings are convened by the authority of the Moderator or at the direction of a superior court. The most common method of notifying members is by public pulpit intimation, but they may be notified individually. Except by special permission of the court concerned, no meeting of a Kirk Session may be convened at a time when the Presbytery or Synod of the bounds or the General Assembly is sitting.

11. ***Moderator of Session:*** The Minister of the congregation is Moderator of the Kirk Session and must preside at its meetings. He may, however, on certain occasions deputise another Minister to preside in his place.

12. ***Quorum:*** Two members of Kirk Session, along with the Moderator, form

## *The Practice of the Free Church of Scotland*

a quorum to enable the meeting to proceed to business, but no business may be transacted if attendance falls below the quorum.

13. **Voting:** Decisions of Kirk Session may be agreed by general consensus of those present, or on the basis of motions, duly moved, seconded and carried.

14. **Powers of Moderator:** The Moderator may introduce any business to the Session and may address them regarding it, but he may not move or second a motion. He has also, in common with the other members, the right of dissent and complaint against any decision to the Presbytery, or Synod, or General Assembly. But he has no deliberative vote, although, in case of an equality, he has a casting vote.

15. **Interim Moderator and Assessors:** In the event of a vacancy in the pastoral office, a Minister, who is a Member of Presbytery, is appointed by the Presbytery to act as Moderator of Session; and in the event of there being no Ruling Elders, or only one, the Presbytery appoint one or more assessors from within their own bounds to act as Members of Session, until a new election of a Ruling Elder or of Ruling Elders shall have taken place.

16. **General Assessors:** Those appointed as assessors in the circumstances noted above are referred to as general assessors and their period of service in that capacity should be distinctly stated at the time of their appointment. The period may be extended by later decision of Presbytery. General Assessors have the same rights, responsibilities and privileges as elected members during the period of their appointment and their names should be included in the list of office-bearers in the Communion Roll of the Kirk Session.

17. **Special Assessors:** If a Kirk Session faces a problem of peculiar difficulty, it may request the Presbytery to augment its number by the appointment of special assessors. Such assessors sit as members of the court only when the specific matter occasioning difficulty is being discussed. Presbyteries, on their own responsibility, having knowledge of difficulty faced by a Kirk Session, may appoint assessors, either general or special.

18. **Session Clerk:** The Kirk Session appoints a Clerk, usually a member of the court, to write up minutes of meetings, attend to correspondence and take care of papers and books belonging to the Session. On appointment the Clerk should solemnly declare that he will faithfully discharge the duties assigned to him. In the absence of the Clerk, the Kirk Session appoints someone to act for him *pro tempore*, and this fact should be noted in the minutes. The temporary clerk should sign the minutes he has written as well as the regular clerk.

19. **Opening and Closing of Session:** All meetings of Kirk Session must be duly constituted, that is, opened with prayer. They must always also be closed with prayer. No minutes are deemed valid which do not state both that the Session was duly constituted and that it was closed with prayer. Extracts of minutes are

## *The Kirk Session*

not valid unless it is clearly stated that the court was constituted, and they are certified as extracted by the Session Clerk.

20. ***Approval of Minutes:*** At the beginning of each meeting, the minutes of the previous meeting are read and the decision of the Kirk Session to approve or correct them should be duly minuted. The correction of minutes does not involve changing any decision or fact noted during the relative meeting. Review of minutes is concerned solely with the accuracy of the account of business transacted. As the Kirk Session usually meets in private, its minutes ought not to be circulated beforehand to members or retained by them if circulated at the meeting.

21. ***Form of Minutes:*** Minutes may be handwritten, typed or printed, and so as to secure neatness in the permanent record are usually presented in draft form. When the draft has been adjusted and approved, it should be signed by the Moderator and Clerk and subsequently transferred to the permanent record book. It is the responsibility of the Kirk Session to ensure that the permanent record accords precisely with the minute as approved. The permanent record should then be signed by the Moderator and Clerk. (See also this chapter, II.17.)

22. ***Open meetings:*** As noted above a Kirk Session usually meets in private, but it may meet in open court or with the congregation when business so demands. It may also invite the Deacons' Court to attend if their advice and assistance are required. Though present on such occasions, Deacons have no vote.

### **PART II: *Powers and Functions of the Kirk Session***

Kirk Sessions are appointed in accordance with clear Biblical principles, in particular in accordance with the following:

(1) The New Testament recommends the appointment of elders to exercise rule in each congregation though not all of them are ordained to full-time teaching and pastoral care.

(2) Indications in the Old Testament and in the organisation of the Jewish synagogue, taken along with apostolic references in the New Testament and the practice of the early Christian Church, point to the existence of a group of elders in each congregation to act with the minister in administering God's law within the congregation.

(3) The rule exercised is under God and accountable to him. No one has a right to exercise lordly authority over God's heritage. No court can supersede the direct authority of Christ's word over the consciences of individual members of His Church.

In the application of these principles to the case of Kirk Sessions, the following rules of practice have arisen:

## *The Practice of the Free Church of Scotland*

1. ***Relation to Minister:*** The date of a minister's induction to a charge ought to be duly noted in the minutes of the Kirk Session. The minister, being directly accountable to the Presbytery which admitted him, is not under the jurisdiction of the Kirk Session; but if the Session deem him to be negligent as to his pastoral duties or in any other way at fault, it may, if brotherly counsel fail, petition the Presbytery on the matter. It is recognised that the minister is permitted a wide discretion in his efforts to reach out to all classes and conditions of people. Consonantly with this he has full use of Church and Hall buildings at his own discretion to further his ministry. This right however is strictly limited to use for religious, ecclesiastical or charitable purposes. For other uses the minister requires the agreement of the Deacons' Court. For their part, neither the Kirk Session nor the Deacons' Court can employ the buildings for any purpose without the minister's consent.

The Minister has a special responsibility for the conduct of public worship, and as praise is a significant part of worship the minister must be satisfied as to the fitness of the precentor. On this matter the Kirk Session also ought to be satisfied. Act XV, 1889 recommends that formal appointment should be ratified by the Kirk Session. In cases where a fee is paid to the Precentor this is the responsibility of the Deacons' Court.

2. ***Congregational Meeting:*** A congregational meeting which is to approve ecclesiastical Acts must be called by authority of the Kirk Session. This notice should be given two Sabbaths in advance with specification of the business to be transacted.

Samples of such acts are the election of a Vacancy Committee, election of a Minister, or approval of a plan to sell or acquire buildings. The annual business meeting of the Congregation which does not include such acts on its agenda does not require the authority of the Kirk Session (Act XXXII, 1976). Congregational meetings called by the Kirk Session should be duly minuted and engrossed in the Session Record.

3. ***Procedure in Electing Elders:*** The Kirk Session determine when it is expedient to have an election of Ruling Elders and what number is required.

It is the duty of the Session to deal in a scriptural manner with those chosen to office, in order to obtain their acceptance. This duty is discharged to a large extent through the Moderator, but it by no means belongs to him exclusively. If the consent of the person or persons elected is obtained, the Kirk Session appoints a day and hour for the ordination or admission, as the case may be, and directs an Edict to be issued and served to that effect, on a convenient Sabbath, at least seven free days before the time appointed for the meeting (Act V, 1912). It is the duty of the Session Clerk to prepare the Edict. It is the duty of the Minister to read it from the pulpit. The Edict contains a statement of the steps which have

## *The Kirk Session*

been taken and the result, and it adds an intimation that if any person has any objection to the life or doctrine of the person or persons mentioned, that objection must be given in to the Session at the meeting of which the time and place are specified, with certification that, if no objection is then and there given in, the ordination or admission will be proceeded with on the day and at the hour appointed.

When the Kirk Session has met at the time specified in the Edict, it ascertains from the Minister that the Edict has been duly issued and served. The Session then directs that intimation be made that if there are any objections, the Session are now prepared to hear them. If any objections are given in, anyone making an objection is required to substantiate it forthwith as an objection to life or doctrine. If the objection appears, in the judgment of the Session, to be substantiated, it must decline to proceed with the ordination or admission, and must take the person objected to upon discipline. But if the Session finds that the objections are frivolous or unsupported by evidence, it is their duty to proceed with the ordination or admission as appointed.

The ordination or admission usually takes place on Sabbath in the presence of the Congregation, at the close of one of the diets of public worship. The Session having been previously constituted, the Moderator gives a narrative of the steps which have been taken and their result. Then he calls upon the elected person or persons to stand up, and puts certain questions required to be answered satisfactorily, in terms of Act XII, 1846. This done, they each sign the Formula in the presence of the Congregation, and then the Moderator, in the case of parties not previously ordained as Elders in any Congregation, sets them apart by special prayer to their office, and commends them to the grace of God, after which he formally admits them as members of the Kirk Session and to the spiritual rule of the Congregation, giving them, as do the other members present, the right hand of fellowship. It is not customary to have the imposition of hands as the prayer of ordination is offered. In the case of persons formerly ordained as Elders, when satisfactory answers to the mandated questions have been given and the Formula has been signed, the Moderator may admit them at once as members of Session, though this also is usually accompanied by prayer. The meeting of the Congregation is concluded by an exhortation from the Moderator, both to the newly admitted Elders and to the people. The names of the newly admitted Elders are added to the Roll of Session.

4. ***Duties of Elders:*** Each Ruling Elder is allowed to exercise a large measure of discretion in the discharge of his functions individually, with a view to the religious and moral interests of the people among whom he personally labours. But it is the duty and function of the Kirk Session collectively to make arrangements for the division of the Congregation into districts, and the assignment of these as fields of labour to the Ruling Elders individually. They are empowered to regulate

## *The Practice of the Free Church of Scotland*

the exercise of all the functions belonging to Ruling Elders, in so far as the orderly working of these may require subdivision or co-operation. It is the duty of Ruling Elders to assist, in so far as they can, in visiting the sick, in arousing the careless, in instructing the young, in encouraging inquirers, in edifying and comforting believers, and generally in seeking after the fruits of the ministry. In so far as the performance of these duties can be rendered more efficient by systematic and combined arrangements, it is the function of the Kirk Session to make such arrangements. For example the General Assembly of 1983 approved a code of guidance for the operation of Sabbath Schools, recognising that “all Sabbath Schools are under the supervision of the Kirk Session” (Assembly Proceedings 1983, page 64).

It also lies with the Session to hold and appoint such meetings for prayer and reading of the Scriptures as they may judge fitted to advance the spiritual welfare of the people or to promote the efficient execution of the office of Ruling Elder, provided they do not thereby interfere with the course of action adopted by the Pastor for the discharge of his peculiar functions.

5. ***Failure to Perform Duties:*** It is the duty of the Kirk Session to ensure that each member duly fulfils the functions of his office and the particular duties assigned to him by the court within his capabilities and the time he can afford. Should he persistently fail in these after patient exhortation, the Kirk Session may request his resignation or initiate a process of suspension/deposition on the grounds of neglect of duty. There are special procedures included in Act I, 1990, for dealing with situations where an elder’s temperament is deemed by the Presbytery to be the cause of a seriously unsatisfactory state of affairs in the congregation.

6. ***Election of Deacons:*** The Kirk Session determines when it is expedient to have an election of Deacons, and what number is required. The Kirk Session exercises precisely the same functions, with reference to the election and ordination or admission of Deacons, as in the case of Elders. The regulating law is to be found in Act X, 1864, and Act XIV, 1846, which last Act puts the procedure in the election and ordination of Deacons on precisely the same footing with that of Elders, the only difference being that, in the questions and answers at ordination, the reference to the particular duties of the office is specific.

7. ***Relationship with Deacons’ Court:*** It is no part of the Kirk Session’s function to review the decisions of the Deacons’ Court. If the Kirk Session considers that the Deacons’ Court has violated the Acts of Assembly or the Laws of the Church, the only remedy, besides friendly remonstrance, to which the Kirk Session can have recourse, is that of presenting a petition to the Presbytery.

8. ***Resignation of Deacons:*** No resignation of office by a Deacon is valid, unless addressed to the Kirk Session, who exercise the same power with reference to Deacons as they do as to Elders, both in their admission to office, and in their

## *The Kirk Session*

removal from it (Assembly Proceedings 1845, page 172).

The Kirk Session may find that an Elder has ceased to be one of their number, or that a Deacon has ceased to be a member of the Deacons' Court, because he has ceased to be a member of the Congregation. It was held competent by the General Assembly in 1806 for a Kirk Session to find that an Elder has ceased to be one of their number because he was not resident in the parish and had failed to return within a period of twelve months to discharge the duties of his office. The General Assembly in 1850 declared that five Elders, having withdrawn from the Session of which they were members for more than a year, had ceased to be, and no longer were, members of the Session or Deacons' Court of the Congregation (see page 157). The Kirk Session has power, in the exercise of discipline, to pronounce sentence of suspension or deposition against either an Elder or a Deacon, when it finds it necessary to do so, in accordance with the word of God, and with the rules of the Church.

**9. *Communicants' Roll:*** With a view to the spiritual oversight of a Congregation by a Kirk Session, it is necessary that an accurate roll of the members in full communion be kept by the Session Clerk among the Sessional documents.

A copy of this roll, revised by the Kirk Session, and signed by the Moderator and Clerk, must be sent to the Presbytery of the bounds every year for attestation. In this copy of the Roll sent to the Presbytery, there ought to be no blanks in which new names could be added, and no names written or erasures, unless the same be duly noticed and attested by the Clerk's initials. The Kirk Session may revise or purge the roll at any period; but it is usual to do so at the time of the dispensation of the Lord's Supper. It is absolutely necessary that the roll be so far revised or purged previously to every dispensation as to enable the Kirk Session to ascertain with accuracy who are entitled to be admitted to communion, as being already members of the Congregation, or who may stand in need of counsel or more formal process. It is the practice also to readjust the roll immediately after the celebration of the Communion so as to take account of changes which have then occurred. It is expressly required by Act IV, 1859, paragraph 9 that, before any steps be taken in the election of a Minister, the Kirk Session shall have a Roll of Communicants made up and attested, as containing the only list of those entitled to vote.

In revising the Communicants' Roll, the Kirk Session should assure themselves that all whose names are included are actually resident within their district and can therefore benefit from their pastoral care. Communicants known to be leaving the district for a year or more should be advised to apply for a certificate to entitle them to join the membership of their new congregation so that their names may be removed from the Roll of the congregation they leave. Those who have been absent for a year should, where the address is known, be advised to apply for such a certificate and informed that failing such application their names will be removed

## *The Practice of the Free Church of Scotland*

from the Roll. It is not appropriate to retain on the Roll the names of members who have removed from the congregation. (See Assembly Proceedings 1978, page 76, paragraph 8.)

Special provision has, however, been made for members of the Church who are absent from their home congregations on the Church's overseas business. Their names may be retained on a "non-active" list attached to the Communion Roll of their home congregation. This list will be ignored for ecclesiastical purposes.

During home-leave, the names of these members are temporarily transferred to the normal list (Act XXX, 1979).

10. **Admission to Ordinances:** Admission to the privileges of Baptism and the Lord's Supper is by authority of the Kirk Session who must be satisfied as to the fitness of applicants (whether as parents or on their own profession) as demonstrated by (1) a confession of faith in accordance with the word of God and the standards of the Church; (2) a life-style befitting the gospel as far as can be discerned; and (3) a competent knowledge of Biblical truth and of the nature and meaning of the sacraments.

There are two ways in which Kirk Sessions can satisfy themselves that these criteria are met.

The first is by receipt of a certificate from another Kirk Session testifying that the person named thereon has been a communicant member of their congregation and leaves in full communion and free, as far as the Session are aware, from all ground of legitimate censure. This document is called a disjunction certificate, and upon receiving it within a short time of its being issued the Kirk Session is bound to have the name given on the Certificate added to the Roll. On the other hand a Kirk Session is bound to grant such a certificate to anyone on their Roll who desires to leave the congregation and against whom there is no known cause of censure.

The second way in which the Session judge an application is that of examination and observation. This applies where applicants have not previously been in full communion with any congregation. Act X, 1885, requires a Session to satisfy themselves that those applying to be admitted as communicant members are already baptised. The examination does not involve any inquisitorial minuteness but depends to a large extent on the observation of the minister and elders and their assurance that there is, in the lives of the persons concerned, no observed inconsistency with the profession of faith being made. In that situation it is not competent for the Session to reject applicants merely on account of what the minister or any elder may conceive to be their state of mind unless the profession made or the knowledge demonstrated be defective. Usually the minister is entrusted with the main examination of an applicant's faith and knowledge, but this does not prejudice the right and indeed the duty of elders to participate as may be

## *The Kirk Session*

helpful.

It is approved practice for the minister to exhort the applicants with respect to all the more hidden qualifications which the word of God requires, and of which they themselves alone can judge. It is held to be his function, as a faithful minister, to leave nothing unsaid which may help the anxious and sincere, or may strike the conscience of the careless or the self-righteous. It is the function of the Ruling Elders also to help in this department, as they may see cause.

The Kirk Session is entitled to regulate the mode for the distribution of Communion Cards or Tokens, according to their discretion.

In the case of visitors desiring to partake of the Lord's Supper it is proper that their communicant membership of another congregation be attested by a minister or elder or by letter.

11. **Baptism:** As noted the Kirk Session also authorise the administration of the sacrament of baptism when they are satisfied as to the Christian profession of those called upon to assume the solemn vows entailed. A Baptismal Roll should be carefully compiled and updated from time to time.

12. **Discipline:** A specially important function of the Kirk Session is the exercise of discipline. This function belongs to the Kirk Session exclusively in the first instance, with respect to all members and adherents of their Congregation, except the Pastor, who is subject to the immediate jurisdiction of the Presbytery.

13. **Times of Worship:** It is the function of the Kirk Session, with concurrence of the Minister, to fix the times and hours of public worship on the Lord's day, to appoint Fast-days, and to authorise the administration of the Sacraments. But it is usual in the case of baptism, where one or both parents is in full communion, to leave the matter in the hands of the minister, who shall report it at the next meeting of the Session.

14. **Special Collections:** The Kirk Session are entitled to appoint special collections at the Church doors for local purposes affecting the cause of Christ or the interests of the Congregation, except for the temporal relief of poor members, or the education of the children or the poor, for which objects the Deacons' Court are expressly authorised by Act of Assembly to appoint collections.

15. **Representative Elder:** Every Kirk Session has a right and is bound to elect a Representative to the Presbytery and Provincial Synod of the bounds. The election is to be made within two calendar months after the ordinary meeting of Synod (except as shall be noted below) and the appointment is for twelve months but those elected continue to represent the Session until a new election has taken place. Should a Kirk Session not elect their representatives and notify the Presbytery Clerk before the first meeting of Presbytery after the Synod the clerk of Presbytery shall require Kirk Sessions to make the necessary election (Act IV, 1893).

## *The Practice of the Free Church of Scotland*

Two special cases are to be noted:

(1) In the case of a charge newly recognised by the General Assembly the election should take place within one month of the newly granted status.

(2) In the case of a consolidated charge which has a plurality of Kirk Sessions, one elder will be elected, preferably by rotation of each Kirk Session to represent the whole charge (Act VIII, 1936).

Every such election must be duly minuted, and the minute must state that the person elected is an Acting Elder in the Congregation. In case of the death of the person elected a new election to cover the period must take place within one month.

If one of the Ruling Elders in any Kirk Session be chosen by a Presbytery to represent them in the General Assembly, that Kirk Session must certify, according to a form prescribed by Act of Assembly, that he is *bona fide* an Acting Elder in their Congregation, and that he has signed the Formula.

In the case of a vacancy and the Interim-Moderator failing to convene a Kirk Session to issue a certificate to an elder commissioned by the Presbytery to represent them in the General Assembly, it shall be competent for a quorum of members of Presbytery, being members of Assembly, to convene by permission of the Assembly and grant the necessary certificate so as to prevent a duly elected commissioner being deprived of his seat (Act XXXI, 1976).

According to Act XIII, 1863, the Elders of Preaching Stations have the full status of Elders, and are eligible to sit in the General Assembly as representatives of Presbyteries. But wherever such Elders are not connected with Kirk Sessions established in fully sanctioned Congregations, their certificates of being *bona fide* acting Elders must be given by the authority of the Presbytery of the bounds.

**16. Order of Business:** The usual and approved order of business in a Kirk Session is as follows:

- (1) The opening prayer, with which the Moderator constitutes the Session.
- (2) The taking down of the sederunt by the Clerk.
- (3) The reading and approval of the minutes of the last meeting.
- (4) Any business of immediate and peculiarly pressing urgency.
- (5) Matters left over at former meetings, in the order of their appearance in the minutes.
- (6) New cases of discipline.
- (7) Other business brought before the meeting, or naturally suggesting itself to the Session's attention.
- (8) Concluding Prayer.

**17. Record of Business:** It is the duty of the Kirk Session to see that their proceedings are accurately recorded by their Clerk. They are bound to watch

## *The Kirk Session*

over the permanent and approved Record of those proceedings and it should be clearly annotated (e.g. by marginal notes) so that separate items of business may be easily identified. They are held responsible by the Presbytery for its being regularly and faithfully kept. Not only must the facts as to the constitution and regular closing of each meeting be correctly stated, as well as the approval of each preceding minute, but the names of all the members present must be recorded.

There must be no blottings or interlinings in the Record. If anything is deleted, it must be marked on the margin, and any word or words omitted must be written on the margin, and attested there by the Clerk's initials. If typed or printed pages are pasted into the permanent record, the Moderator or Clerk should put his initials across the junction line of page and insert. Any erasure of the minutes can be made only by authority of the Presbytery who may call for the Record at any time.

It is sent up from time to time for examination and attestation by that body. Every minute ought to be signed, both by the Moderator and the Clerk.

18. ***Dissent:*** Any member of a Kirk Session may enter his dissent from any part of their procedure which he conceives to be contrary to the Word of God, the Acts of Assembly, the received order of the Church, or the interests of Christ's cause. He may require his dissent to be marked in the Record. In order to be received, the dissent must be given immediately when the judgment dissented from is pronounced, and consequently can be given in by those only who were present at the pronouncing of it. Absent members are not entitled to dissent. If a dissent has been given in at the proper time by one or more members of Session, there is no rule to prevent other members of Session who were present from intimating at the next meeting their adherence to that dissent. If reasons for the dissent be given in along with it, both the dissent and the reasons ought to be included in the minute of the meeting. If the dissent itself be duly given in, intimation may be also given that reasons for it will be added at a subsequent meeting, in which case it is competent to receive the reasons when produced, and also to answer them if the Kirk Session see cause. But the Kirk Session are not bound to enter those reasons in the Record. The right course is to appoint them to be kept *in retentis*, that is, to be preserved among the Sessional documents. A simple dissent as here described, whether with or without reasons, is not sufficient to enable the person dissenting to bring the matter under the review of a superior Court. The effect is only to save him from any censure that may arise out of the procedure, and from seeming to acquiesce in what he considers contrary to the mind of Christ.

19. ***Dissent and Complaint:*** A member of Kirk Session may not only enter his dissent from a judgment, but he may (as it is technically expressed) *dissent and protest for leave to complain* to the Presbytery. A dissent and complaint can be received only at the time when the judgment complained of is pronounced, and

## *The Practice of the Free Church of Scotland*

are incompetent at a subsequent meeting. Reasons of dissent and complaint must be lodged with the Session Clerk within ten days from the date of the judgment and the protest. Copies of these reasons, with all the papers and extracts of minutes belonging to the case out of which the complaint has arisen, must be transmitted by the complainer(s) or clerk of Session to the Clerk of Presbytery. The copies, papers, and extracts must be all duly certified by the Session Clerk.

The effect of a Dissent and Complaint carried out in regular form is to bring the proceedings of the Kirk Session under the review of the Presbytery; and the complainer or complainers, and all parties in the case, as well as the majority of the Kirk Session, are thereby summoned to appear before the Presbytery. The giving in of a dissent and complaint has the effect of sisting (that is, suspending) the procedure of the Kirk Session in the matter to which the complaint relates, until either a final decision by the Presbytery, or Synod, or General Assembly be pronounced on the case, or the complaint be fallen from. A complaint may be fallen from at any time, but it is always held to be fallen from if the reasons are not lodged with the Session-Clerk or Moderator within ten days.

20. **Appeal:** It is to be noted that the right of dissent and complaint belongs to those who sit as members of the Kirk Session, and the exercise of that right is their only way of seeking review of decisions which grieve their consciences.

Persons who appear before the Session, either on their own initiative or by citation are referred to as “parties at the bar”. These may, on occasion, include some who usually sit as members of the Session. If such parties are aggrieved by the decisions of Session, their method of seeking review by the superior Courts is by way of appeal. Procedures in the prosecution of an appeal are exactly the same as those for dissent and complaint but the difference in technical terminology must be observed. It is the duty of the Session to inform people desirous of seeking review of their decisions of the correct method and terminology so that review will not be refused by the superior Court on the ground of confused terminology or incorrect procedure. In some cases matters may be brought under review by both dissent and complaint, and appeal when members of the Session dissent and complain against the same decision as has provoked appeal from parties at the bar.

When an appeal against a decision of the Session is intimated, the Session consider whether or not it is frivolous.

An appeal which is not considered frivolous sists procedure until a final judgment be pronounced regarding it by a superior Court, or until it be fallen from, except in those instances in which the General Assembly may have otherwise provided by special act or instruction. Such an appeal always prevents, while it is pending, the final execution of sentence. Frivolous appeals may be disregarded, the right of the appellant to prosecute his appeal being always reserved. An appeal

## *The Kirk Session*

may be fallen from at any time, but is always held to be fallen from if the reasons for it are not lodged with the Session Clerk or Moderator within ten days from its date.

21. ***Rescinding Decisions:*** Rescinding or modifying decisions already agreed and duly minuted is not to be lightly undertaken. The General Assembly has directed, with special reference to Presbyteries, but enunciating a principle applicable also in Kirk Sessions, that such action can only be taken in the light of new evidence affecting the matter, or demonstration that the decision minuted has consequences at the time unforeseen, prejudicial to good order, equity or the interests of the court, and even then procedure must be by notice of motion. Those rescissory powers do not apply in judicial cases where corrective action requires the intervention of a superior court.

22. ***Reference:*** The Presbyterian structure is designed to secure that the larger Court will help the smaller. So, when a Kirk Session confronts an issue of peculiar difficulty in regard to the interpretation of Scripture or Church law, or the resolution of a difficulty, they may refer the matter, in whole or in part, to the Presbytery for advice. They must bear in mind, however, that recourse to the Presbytery for advice is not to be used as a means of evading their own responsibility, for if the Presbytery deem the reference unnecessary or improper they may refuse to entertain it and censure the Kirk Session.

Matters may be referred without comment or indication of the Kirk Session's tentative conclusions. This is called a reference *simpliciter*. Or they may be referred with a statement of the Session's views on the subject on which they wish Presbytery to advise. Whether the reference is *simpliciter* or with comment, it is important that all particulars are fully and clearly stated so that the reference can be fully understood. The Kirk Session instruct their clerk to do this. Those directly concerned in the reference, for instance the parties in a case, should be informed of its being made, since they should be in attendance before the Presbytery.

If the General Assembly meet before the next meeting of Presbytery, the reference may be made directly to the Assembly.

In certain situations, which will be noted later (V.III.2.28), Kirk Sessions are bound to refer to Presbytery.

23. ***Citation:*** In order to maintain good order in the congregation a Kirk Session may need to interview people. If the matter is such as is likely to be resolved by joint pastoral conversation with the person concerned, he may simply be invited to attend. If, however, the matter is more serious, for instance involving discipline of a member, or if the person concerned declines the invitation given, the recourse is to a formal summons issued by the Session. This summons is referred to technically as a *citation* and states both the requirement to attend the Session at a specified time and place and the reason for the requirement. Citations are of two

## *The Practice of the Free Church of Scotland*

kinds. One is a written statement which is delivered to the person named or to his home and the Kirk Session must have written assurance that it has actually been delivered. The other is what is called a *citation apud acta*, that is, a verbal statement to the person cited when he is present at a meeting of the Kirk Session.

24. ***Petition to a Kirk Session:*** People connected with a congregation have freedom of access to the Kirk Session regarding any matter which affects their spiritual interests or those of the congregation, or the diffusion of the gospel in the district. To be received by the Session such matters must be stated in writing.

Strict formality would require that they be presented in the form of a Petition, but Sessions usually accept a courteously framed letter as though it were a Petition.

When the Session deal with the Petition those who have presented it become parties at the bar and so have the right, when the decision is announced, to appeal to the higher courts.

25. ***Petition of Session to Presbytery:*** It is competent for the Kirk Session themselves to petition the Presbytery, or Synod, or Assembly, with relation to any subject within the competency of the superior Court to which the petition is addressed, if the subject is not one which can come up by reference, appeal, or complaint.

26. ***Rights to Extracts:*** When people, aggrieved by decisions of a Kirk Session, wish to bring them under review of Presbytery by complaint and appeal, the Session must explain to them that they are entitled to such extracts from minutes of Kirk Session and to copies of such papers held by the Session as are necessary to bring their complaints and appeals fully before Presbytery and upon these being requested they must authorise their clerk to provide them. The intimation of complaint/appeal should be accompanied by a request for such papers and the fact of request must be duly minuted. The technical expression used in such a minute reads: *took instruments in the clerk's hands and craved extracts which were allowed*. "To take instruments" originally implied the tendering of a piece of money to the clerk, but this formality is seldom observed in present practice.

The Kirk Session, if they think fit, grant extracts to other parties besides complainers and appellants. But the Session Clerk is not at liberty, in any instance whatever, to give extracts without the sanction of the Kirk Session.

27. ***Relationships with other Sessions:*** One Kirk Session cannot interfere with or review the procedure of another Kirk Session. One Kirk Session may remonstrate with another Kirk Session in the spirit of the Gospel, or mutual explanations may be asked and given. But the only regular mode of redress for encroachment by one Kirk Session on the province of another, is for the Kirk Session who feel that their jurisdiction has been interfered with, to petition the Presbytery upon the subject. Such petition ought to be addressed to that Presbytery which has jurisdiction over the Kirk Session whose procedure is complained of.