

CHAPTER II

THE PRESBYTERY: ITS CONSTITUTION, POWERS AND FUNCTIONS

PART I: *Constitution and Officials*

1. ***Biblical Foundations:*** “The Scripture doth hold out a Presbytery in a Church”. (“The Form of Presbyterian Church Government”, Subordinate Standards).

1.1 Besides that of Deacon the New Testament recognises one other permanent office in the Church, that of elder or overseer/bishop. The titles elder and overseer appear interchangeable in New Testament usage. To the elder is assigned the task of rule or spiritual oversight of the people of God. Some elders also undertake the responsibility of regular public preaching and teaching and the administration of the sacraments and these are generally known as ministers or pastors. This distinction of function as between the ruling and the teaching elder is recognised by Paul in his advice to Timothy: “The elders who direct the affairs of the Church well are worthy of double honour especially those whose work is preaching and teaching” (1 Tim. 5:17).

1.2 Both common-sense and Biblical example require that those responsible for rule in the Church should meet together from time to time to consult, deliberate and take action to promote the interests of the Church. Moreover the New Testament gives distinct examples of congregations sufficiently close geographically being united under one presbyterial government. The New Testament also warrants recourse to the principle of representation where it is inappropriate or inconvenient for the whole ruling eldership in any region to convene.

1.3 The interests of equity, unity and order suggest that the small local body which rules in one congregation should be subject to the advice, supervision and direction of the larger body which is representative of many congregations. In plain terms this means that a Kirk Sessions is subject to review by Presbytery just

The Presbytery

as Presbytery is subject to Provincial Synod and General Assembly.

2. ***Pivotal Position:*** Presbytery is often described as the radical court of the Church and the system of Church Government which stems from it is referred to as Presbyterian. Several facts underline the important position of Presbytery.

2.1 To Presbytery is assigned the responsibility of pastoral oversight of all congregations within a defined region. Provision for vacant congregations, intervention in cases of difficulty and general oversight of the ministry belong to Presbytery.

2.2 Presbyteries have a determining voice in the membership of General Assemblies, commissioners being appointed by them.

2.3 Presbyteries have a major responsibility in the assessment of candidates for the ministry.

2.4 Presbyteries have the responsibility of licensing candidates to preach the gospel and ordaining men to the office of the ministry.

2.5 Presbyteries are responsible for the pastoral counselling and formal discipline of ministers.

3. ***Membership.***

3.1 The membership of a Presbytery comprises:

- (1) All ministers holding pastoral charges within the bounds;
- (2) Assistant ministers in pastoral charges within the bounds, appointed in terms of Act V, 1986;
- (3) Ministers retired from pastoral charges within the bounds in terms of Act I, 1981;
- (4) Ministers whose retirement involved their retaining status as senior ministers of charges within the bounds (Act VIII, 1862 now repealed);
- (5) Professors of Theology whose appointment by the General Assembly is to work within the bounds (see Part II of this chapter, A3.13);
- (6) Ordained ministers of this Church appointed as Hospital Chaplains within the bounds who are granted seats in Presbytery by the General Assembly;
- (7) Ordained ministers appointed as evangelists and assigned to a Presbytery by the General Assembly;
- (8) Ordained ministers who have been specifically granted seats in Presbyteries or who shall be in terms of Act XII, 1990;
- (9) A representative elder from each congregation within the bounds elected by a Kirk Session. In cases such as consolidated charges, where there is a plurality of Kirk Sessions, those Sessions will take turns in appointing the elder (see 3.2);
- (10) Elders elected by Presbytery in respect of each theological professor within the bounds;

The Practice of the Free Church of Scotland

(11) General Assessors appointed by the Provincial Synod or the General Assembly. Assessors appointed to assist in a special task have membership only when Presbytery deals with that topic;

(12) A Presbytery has the power to associate with itself *pro tempore* any ordained minister who is present at their meeting. The minister associated may take part in discussion but he has no right to introduce new matter or to vote on any issue.

3.2 A Kirk Session is bound to elect one of its number as its representative on Presbytery and Synod and to certify that he is actually serving as an elder in the congregation. This election must be made within two months of the statutory meeting of Synod, the date on the commission attesting this, except in the case of the death of the appointed elder or of his resignation of his commission, in which case the election must take place within one month of the death, resignation or removal. The commission from the Kirk Session entitles the elder to a seat in Presbytery and Synod during the time of its validity. Without a valid commission he cannot assume his seat. A commission may be received by Presbytery at ordinary meetings or at meetings *in hunc effectum* and *pro re nata* (see 9.1 and 2).

4. **Assessors:** Assessors, both general and special, may be appointed by the Provincial Synod or by the General Assembly to assist the Presbytery in a manner analogous to that in which the Presbytery may appoint assessors to assist a Kirk Session (see Chapter I, Part I.16 and I.17). General assessors have full rights of voice and vote: special assessors have such rights only in connection with the particular items of business to help with which they have been appointed.

5. **Locality and Bounds:** Presbyteries have congregations within their care allocated by the General Assembly and these are all described as “within the bounds” of the presbytery. The usual place of meeting, described as “the seat” of Presbytery, is also designated by the Assembly but meetings may be held at any place within the bounds as Presbytery deems convenient.

It is within the competence of the General Assembly to erect new Presbyteries and to unite existing ones and to alter the bounds in such ways as may improve the efficiency of the Church.

6. **Presbytery of Foreign Missionaries:** When two or more ordained missionaries are resident at any Foreign Station where there is no independent, indigenous Church, it is competent for them, in subordination to the General Assembly, to form themselves into a Presbytery, there being always one Ruling Elder a member of such Presbytery for every Missionary or Minister who belongs to it.

7. **Quorum:** Three members of Presbytery form a quorum, two of them being ordained ministers.

8. **Frequency and Appointment of Ordinary Meetings:** The election of

The Presbytery

Representatives to the General Assembly necessitates at least two meetings in a year, but the incidence of business requires Presbyteries to meet much more frequently. It is competent for Presbyteries to adopt Standing Orders which will programme meetings at regular intervals without inhibiting liberty to appoint others as expedient. What is mandatory is that at each ordinary meeting Presbytery resolve when and where the next ordinary meeting shall be held and that this resolution be minuted and publicly announced. If these requirements are not observed the Presbytery is deemed to have become defunct and cannot function until revived in a constitutional manner. A Presbytery will also become defunct if at the time and place appointed a quorum of members does not assemble (see 10.3 below). In this case the names of those who have met will be noted in a subsequent minute and they will be free of any censure pronounced by Synod when the circumstances are reported to that Court. Except by special permission of the Superior Court concerned, a Presbytery may not meet while either the Provincial Synod or the General Assembly is sitting.

9. ***Suspension/Adjournment:*** A distinction is made between suspension and adjournment. Suspension merely indicates a break in proceedings which will resume at a later hour without the necessity of reconstituting the meeting. Adjournment signifies the closure of the meeting in due form.

10. ***Types of Meetings:*** Meetings held in consequence of a resolution to adjourn until a specified date when the normal business of Presbytery will be transacted are referred to as “ordinary meetings” or meetings for ordinary business. But besides those there are other categories of meeting described as follows:

10.1 ***In Hunc Effectum meetings:*** When a Presbytery wishes to meet to transact specified items of business and these only, it appoints a meeting *in hunc effectum*, that is, to effect this particular business. The induction of a minister to a charge is one of the items of business frequently carried out at an *in hunc effectum* meeting, but a Presbytery may assign any items of business which require extended study and discussion to such a meeting. The resolution appointing such a meeting and specifying its time and place and the item(s) of business to be transacted must be engrossed in the minutes of the immediately preceding ordinary meeting at which also public intimation of the *in hunc effectum* meeting must be made. The first item of business at the *in hunc effectum* meeting is the reading of the minute authorising it and specifying the agenda. No other business may be transacted.

10.2 ***Pro re nata meetings:*** This is an emergency meeting of Presbytery designed to deal with some matter of importance which has unexpectedly arisen between ordinary meetings. It is not a device for hastening the transaction of ordinary routine business. For example, requests for moderation in a call do not justify the calling of a *pro re nata* meeting because Presbyteries, aware of vacancies within the bounds and the possibility of elections, should programme their meetings

The Practice of the Free Church of Scotland

to ensure that no undue delay is imposed upon congregations wishing to request such action. *Pro re nata* meetings are designed to deal with situations unforeseen which require urgent action if the interests of the Church are to be safeguarded.

A *pro re nata* meeting may be called by the Moderator of Presbytery on his own initiative or as a consequence of a requisition addressed to him by members of Presbytery. The circular calling the meeting must be sent to every member of Presbytery in reasonable time before the date of meeting and must state the item of business requiring urgent attention. No other business may be transacted at the meeting. If the date of meeting be between the meeting of Synod and the first ordinary meeting of Presbytery thereafter, the Moderator of Presbytery must inform the Moderators of Kirk Sessions of the need to elect representative elders whose commissions can be received at the *pro re nata* meeting.

When the *pro re nata* meeting is held the Moderator must first of all explain his reasons for calling it and the Presbytery must pronounce judgment upon his conduct in doing so. Any member of Presbytery not present at the *pro re nata* meeting may at the next ordinary meeting raise the question of the propriety of calling the meeting or the manner in which it was called.

If the Moderator declines to act upon a requisition from members desiring a *pro re nata* meeting, the whole circumstances of the case may be raised at the next ordinary meeting of Presbytery.

It is not competent for a *pro re nata* meeting of Presbytery to appoint an *in hunc effectum* meeting. If the emergency business which necessitated the calling of the *pro re nata* meeting cannot be completed at one meeting and still cannot be delayed until the next ordinary meeting it would appear that the only course open is to call a further *pro re nata* meeting by citation *apud acta* and this eventuality, if foreseen, should be included in the original circular, failing which absent members would have to be notified individually.

10.3 *Pro re nata to revive Presbytery:* If a Presbytery becomes defunct as described in 8 above the following method is employed to enable it to function again.

Three or more members may address a requisition to the Moderator with which he is bound to comply, to call a meeting of all members of Presbytery for the sole purpose of naming a day on which the Presbytery shall meet and conduct ordinary business. At least ten days and not more than fifteen days notice must be given from the date of requisition to the date when members are to convene and their meeting is to be considered *pro re nata*. The necessity for such procedure must be explained to the next meeting of the Provincial Synod and the Presbytery may be censured if Synod is not satisfied with the explanation (Act XII, 1866).

11. *Officials.*

11.1 *Moderator:* When a new Presbytery is erected by Act of the General

The Presbytery

Assembly, that Act names the minister who is to preside at the constituting meeting.

Once constituted the Presbytery immediately elects its Moderator who will hold office until the meeting of Presbytery following the statutory meeting of the Provincial Synod. Then, year by year, Presbytery elects one of its Ministers as Moderator, at the first ordinary meeting after a stated meeting of the Provincial Synod. The course usually followed is to appoint each Minister in succession, as the names stand on a Roll, which is made up according to seniority of Ordination.

In the absence of the Moderator, the Minister who previously held the office takes the chair *pro tempore*, and failing him the senior Minister present does so. It is always in the power of the Presbytery to appoint a Minister to act as Moderator *pro tempore*, on any particular occasion. If a Minister takes the Chair temporarily, whether through ordinary rule or through special appointment, simply in consequence of the Moderator's absence, and the Moderator appears at any stage of the proceedings, he is required to take the chair immediately, and the temporary occupation of it ceases there and then.

In case of equality the Moderator has only a casting vote. He is not permitted to take part in any discussion while he occupies the chair, but he may ask leave to vacate the chair for the purpose of expressing his opinion. When this request is granted, the chair is occupied in the meantime as it would be in his absence.

It is the duty of the Moderator to preside in the devotional exercises of the Presbytery, to pronounce the blessing at the close of each Meeting, and to act for the Presbytery in keeping order, in announcing decisions, in administering rebukes and admonitions, in instructing parties at the bar, and in calling upon Members to state their views, to give their votes, or to discharge any functions which have been assigned to them. At the Ordination of a Minister, or at the licensing of a Probationer, the acting Moderator puts the appointed questions, offers up appropriate prayers, and delivers appropriate exhortations, unless otherwise arranged by the Presbytery.

11.2 **Clerk:** The Presbytery appoints one or more Clerks. The Clerk is usually a Member of Presbytery. He may be appointed for a fixed or indefinite period. On his appointment he solemnly promises to discharge the duties of the office with fidelity. It is the duty of the Clerk to compose regular Minutes of the Presbytery's procedure and to engross them in a permanent record, after they have been approved of by the Presbytery as correct. It is common practice for the Clerk to circulate typewritten copies of the Minutes to Members of Presbytery so that they need not be formally read when submitted for approval. It is also the duty of the Clerk to give such extracts to parties as the Presbytery have allowed, and to take charge of all the Presbytery's papers, books, and documents. In the absence of the Clerk some one is appointed by the Presbytery to act as Clerk *pro tempore*. The fact of his appointment should be entered in the Minute, and the Minute

The Practice of the Free Church of Scotland

should be signed both by him as Clerk *pro tempore* and by the regular Clerk. The Clerk is usually awarded an honorarium drawn from Presbytery funds.

11.3 **Officer:** The Presbytery may appoint an official to be in attendance at meetings and execute orders. At his appointment he should promise to perform the duties assigned with fidelity. He should be awarded an honorarium from Presbytery funds.

12. **Formal Opening and Closing:** Every meeting of Presbytery is opened and closed with prayer. Common practice is to open with praise, reading of Scripture and prayer. Every minute to be valid must state that the Presbytery was constituted and that it was closed with prayer. "Constituted" in this case means opened with prayer in the presence of a quorum of members. No extract of minute is valid and so receivable by any other body which does not state that the Presbytery was constituted. Topics referred to in the minute which are the subject of extracts must be approved before valid extracts can be given.

13. **Minutes:** Before proceeding to any other business, the Presbytery must, at each ordinary meeting, have the Minutes of the last ordinary meeting, and the Minutes of any intervening *in hunc effectum* or *pro re nata* meeting, submitted by the Clerk. The Presbytery must then either approve of these Minutes as submitted, or correct them and approve of them as corrected. They cannot afterwards be altered, except by the authority of a higher Court. The Minutes of any proceedings which have taken place when the Presbytery met in private are not of necessity read or approved of until the Presbytery are again in private at an ordinary meeting.

The approval or correcting of the Minutes does not imply any power to alter what was done at the meeting. The only question is the correctness of the Minute as a true account of what was done. The Minute of each Meeting or Sederunt must, after it has been approved of and engrossed in the permanent Record, be signed by the Moderator and Clerk. Any person who has acted either as Moderator or Clerk during a portion of a Sederunt, ought to sign the Minute of that Sederunt, as Moderator or Clerk *pro tempore*, in addition to the signature of the other person occupying either office. The Sederunt of every Meeting (that is, the names of all the Members present) must be accurately recorded in the Minute.

14. **Openness of Presbytery:** The Presbytery is, by long-established practice, an open Court. It is held desirable that this Court should be open with respect to all ordinary matters that occupy their attention. But they have the power of closing their doors, and declaring their wish to meet in private, when they judge it more for edification. In case of their abusing this power, the abuse maybe corrected by the Synod or the General Assembly. It usually sits in private when dealing with cases of discipline that involve charges or proofs of scandal, if the publication of those charges or proofs might be injurious to justice or purity. It is bound by Act of Assembly to meet in private when students are proposed for trial, and when the

The Presbytery

private trials of students are going on.

15. ***Roll of Members:*** It is necessary that an accurate Roll of the Members of Presbytery be kept by the Clerk as authorised by the Presbytery, and that it be corrected regularly on the occurrence of changes. The names of the Ministers ought to be in the order of ordination.

16. ***Attendance:*** Members of Presbytery are duty bound to attend all meetings of the court. When a member cannot attend he must send a note of apology and explanation to the Presbytery Clerk and Presbytery may sustain the apology.

PART II: POWERS AND FUNCTIONS OF THE PRESBYTERY

The functions of a Presbytery reflect its pivotal position in the ecclesiastical structure and may be categorised in respect of (A) original action, (B) review, and (C) relations to superior courts. In section D certain aspects of the conduct of business common to these areas of responsibility are discussed.

(A) ORIGINAL ACTION

1. *Responsibility for Candidates for the Ministry.*

1.1 As noted in Part 1, 2.3 and 2.4, Presbytery has a determining voice in the assessment of candidates for the ministry. Whilst there are no clear lines of distinction between the responsibilities of Kirk Sessions, Presbyteries and the Assembly's Training of the Ministry Committee in this matter some general distribution of functions has emerged in practice. The Kirk Session through which a candidate first applies is deemed to have fairly intimate knowledge of the candidate's spiritual experience, general demeanour and reputation and to be in a position to support or discourage his candidacy on that basis. The Presbytery, whilst to an extent dependent on the testimony of the Kirk Session, make specific examination as to the candidate's call to the ministry and his possession of the requisite gifts of personality, temperament and ability. The Training of the Ministry Committee are more directly concerned with the intellectual and academic promise of the candidate and with the known needs of the Church.

1.2 During the years of training for the ministry candidates are under the pastoral care of their Presbyteries and when they have entered on specifically theological studies are examined year by year by their Presbyteries in Scripture, theology and practical religion. Continuance of their candidacy depends on Presbytery being satisfied with the results of their examinations .

2. ***Licensing of Candidates:*** Though during the course of their training

The Practice of the Free Church of Scotland

candidates for the ministry engage in public preaching from time to time they are not formally licensed to preach until they have completed the course of studies required by the Training of the Ministry Committee and have passed examinations, called “trials for licence”, conducted by Presbytery. Those duly licensed, usually called Probationers, are eligible for calls to pastoral charges.

2.1 As the licensing of candidates for the ministry is of concern to the whole Church, all Presbyteries and Synods must be informed of the names of applicants for licence and of the Presbyteries to which they intend to apply. This is done on the initiative of the candidate who at the beginning of his last session of college studies informs the Training of the Ministry Committee and the Committee, in turn, informs Presbyteries and Synods. If no objection is received from any court by 30th April Presbyteries may proceed to trials for licence. The general scope and particular topics to be included in these trials are regulated by Act of Assembly, presently Act XIX, 1988.

2.2 It is the usual practice for the Presbytery to proceed toward the immediate licensing of a student to preach the Gospel at the same meeting at which it has been satisfied with his trials upon a conjunct view of them. After this final judgment in his favour has been arrived at, the Moderator proceeds, in the name of the Presbytery, to put the questions required by the Act of Assembly; and, satisfactory answers having been obtained, and the Formula having been signed, he, in the name and by authority of the Presbytery, solemnly licenses the student to preach the Gospel within the bounds of the Presbytery, and wherever else his lot may be cast in the course of God’s Providence. Thereafter the Moderator addresses the newly-licensed preacher in suitable terms, and the Presbytery then engages in prayer, the Moderator conducting the devotions. At the conclusion of the procedure, the Moderator and other members give the right hand of fellowship to the Licentiate.

2.3 **Register of Probationers:** It is the duty of Presbytery clerks to notify the Clerk of Assembly of the name and address and date of licence of those newly licensed so that the details may be entered in the Register of Probationers. In terms of Act XXIX, 1988, names may remain on the Register for up to six years and if continuance on the Register is desired a Petition to this effect may be addressed to the Presbytery within whose bounds he resides [corrected text] who may extend the period in the Register to a maximum of ten years. When a licensed preacher is ordained and inducted to a charge, the clerk of the ordaining Presbytery should notify the Clerk of Assembly so that the relevant names may be removed from the Register.

3. **Care of Vacancies:** A congregation becomes vacant through the resignation, retirement, death, removal to another charge or removal as the result of Presbytery action, of the minister. In this event the Presbytery has the responsibility to ensure continuance of gospel ordinances and pastoral care and discipline, and to take

The Presbytery

measures, within the laws of the Church, to fill the vacancy.

3.1 *Interim Moderator:* One of the first actions of Presbytery upon the occurrence of a vacancy is the appointment of one of their ministers as interim-moderator of the Kirk Session of the vacant congregation. He is vested with the authority and executes all the functions of the stated pastor, except that it does not appear to be his duty to take any charge of convening the Deacons' Court, that duty being expressly assigned to the Clerk of the Deacons' Court during a vacancy in the pastoral office.

3.2 *Declaration of Vacancy:* It is the responsibility of Presbytery to have a congregation formally declared vacant upon the removal of a minister for any reason. This duty is usually assigned to the minister appointed as Interim Moderator and in making this appointment Presbytery usually takes account of any recommendation made by the relevant Kirk Session. By long-standing practice, if the vacancy is occasioned by the death of a minister, the members of Presbytery attending the funeral appoint a minister to declare the vacancy and they also arrange for the supply of the pulpit until the next meeting of Presbytery. They report these actions to Presbytery in due course.

3.3 *Preliminaries to filling vacancy involving Presbytery.*

3.3.1 When a congregation whose contribution to central funds is less than the normal stipend paid to ministers becomes vacant and its main building is not more than fifteen miles from the main building of another congregation, vacant or settled, the Presbytery is required to take all possible steps to bring about a linkage (Act XII, 1984).

3.3.2 Upon the occurrence of a vacancy the Presbytery should consider whether procurement of a settlement is likely to require recourse to special categorisation as a Redevelopment Charge or a Charge on Special Arrangements, or, through association with other congregational units, as the Charge of a District Minister. If such action seems necessary and desirable, the Presbytery will have to consult the Sustentation Committee and through it petition the General Assembly. If no such action is necessary, the Interim-Moderator will guide the vacant congregation in the steps necessary to filling the vacancy.

3.4 *Preliminaries at Congregational Level:* Soon after the congregation has been declared vacant the Kirk Session authorises the calling of a congregational meeting for two purposes

- (1) to complete a schedule to be submitted to the Sustentation Committee, and
- (2) to elect a Vacancy Committee.

3.4.1 *Relation to Sustentation Committee or other relevant Committee:* Until the Sustentation Committee agree to the arrangements proposed by the congregation no minister can be called and assured of payment of stipend. The minimum pledge

The Practice of the Free Church of Scotland

required by the Committee is a sum equal to the normal stipend. In the case of Church Extension charges agreement as to financial arrangements must be made with the Church Extension Committee. The actual conditions in these cases may vary from one case to another.

3.4.2 ***Vacancy Committee:*** No precise rules have been formulated with regard to the election of a vacancy committee or its procedures, but general experience suggests the following guidelines:

- (1) Elders and deacons are *ex officio* members of the vacancy committee.
- (2) Others may be elected to the Committee by the congregation (Act IV, 1859). Names may be suggested by the congregation and it is advisable that account be taken of the total number needed and of the appropriateness of including adherents on the Committee. The overriding aim is to secure that the full scope of legitimate congregational interest will be represented.
- (3) The business of the committee is to make arrangements for the pulpit to be supplied by ministers, probationers and divinity students deemed suitable to fill the vacancy in due course. Neither the invitation to preach nor its acceptance implies any commitment with regard to a possible call. Nor need the final choice be from those heard during the vacancy. The order in which preachers are heard has no greater significance than that of convenience. It is strictly improper for any commitment to be given to or sought from divinity students who may happen to supply the pulpit during the vacancy.
- (4) There is no need for the observance of secrecy in regard to decisions of the Committee as these concern the congregation as a whole. As representatives of the congregation, Committee members should be encouraged to invite reaction and suggestions and to report these in Committee. What is strictly confidential is the free expression of opinion in Committee. Opinions expressed in confidence in Committee should not be publicly divulged.
- (5) When invited preachers have been heard and it seems that the congregation are ready to endeavour to fill the vacancy it is usual for the vacancy committee to agree upon a name to be recommended to the congregation. Obviously unanimity on this point in Committee is greatly to be desired but if this cannot be achieved there may be no alternative to asking the congregation to choose between two or even three names.
- (6) When the Vacancy Committee is ready to meet the congregation with their proposal(s) they request the Kirk Session to call a congregational meeting in order that they may do so.

The Presbytery

(7) Minutes: It is advisable that a Vacancy Committee appoint a clerk to keep minutes of all proceedings. These minutes should be kept in a separate record.

3.5 Election of Minister.

3.5.1 **Procedure:** The election and calling of a minister to be Pastor of a congregation belong, in the first instance, to communicant members of the congregation. The call must be approved and sustained by the Presbytery which must be satisfied that it is harmonious. If the call is an occasion of disharmony the Presbytery must endeavour to overcome this, failing which it must refer the matter to the Superior Courts for advice (Act IV, 1859).

At a congregational meeting duly authorised a member of the Vacancy Committee proposes for election as minister the name of the person agreed upon in Committee. If there is more than one recommendation other Committee members will also propose names. The congregation are not bound to accept the recommendation(s) of the Committee and opportunity to make other proposals should be given.

3.5.2 **Eligibility:** The following are qualified to be elected, called and admitted as Pastors of congregations or assistant ministers:

(1) Persons who have been admitted to and have not lost the status of ministers of this Church, with certain exceptions as follows:

(a) Ministers placed under limitation by the General Assembly at the time of their ordination/admission;

(b) Ministers who have resigned from their charges and whose names have been placed on the Roll of Resigned Ministers (Act XIII, 1990). (Those who have resigned charges and are included in the Register of Ministers without Charge are eligible for Call);

(c) Ministers subject to a disciplinary process or under suspension as the result of such process;

(2) Ministers of the Presbyterian Church of Eastern Australia in terms of a Federal Relations Act with that Church (Act I, 1952).

(3) Ministers of the Presbyterian Church of Eastern Australia who have resigned their charges and secured inclusion in the Register of Ministers without Charge of this Church in terms of Act I, 1974.

(4) Probationers of this Church, and those of the Presbyterian Church of Eastern Australia who fulfil the conditions of Act I, 1974.

3.6 **Trials for Ordination:** Before agreeing to ordain and induct Probationers, Presbyteries must require them to submit to and pass certain examinations usually referred to as “trials for ordination”. The topics of examination are at the discretion of Presbytery and may be largely catechetical with special attention to Pastoral Theology (Act XIII, 1982).

The Practice of the Free Church of Scotland

3.7 *Right of Election:* The right of election and therefore of nomination is vested in the communicant membership of the congregation. Due attention is also given to views expressed by regular attenders in the congregation whose names are not on the communion roll. They are also given opportunity to concur or not with the election.

3.8 *Types of Call:* If it is found that the congregation are cordial and wholehearted in their support of the nomination which has secured a majority in the election, a proposal may be made to request Presbytery to moderate in a *closed* call, that is, one in which the person elected is named. If there is some opposition but a majority in favour seems assured the proposal should be to request moderation in an *open* call. Moderation in an open call requires a new election in presence of the Presbytery. When resolved to request Presbytery to moderate in a call, the congregation appoint representative(s) along with the Interim-Moderator to bring their request before Presbytery.

3.9 *Before Presbytery.*

3.9.1 It is usual for the Interim Moderator of Session to make a report to the Presbytery respecting the condition of the congregation, the amount of their agreement as to the choice of a pastor, and their ripeness for calling one. If this report be unsatisfactory, or if the Presbytery have otherwise good reason to fear that a sufficiently harmonious call cannot be obtained, they shall hold a meeting with the congregation, and shall not proceed to moderate in a Call till they have exhausted all means for producing harmony, and, should these means prove unsuccessful, they shall refer the matter to the Superior Church courts for advice (Act IV, 1859).

3.9.2 Before agreeing to moderate in a Call Presbytery must be assured that financial arrangements have been agreed with the relevant Committee, usually the Sustentation Committee. Agreements made with the Sustentation Committee are valid for two years. If no settlement is achieved within that period a new schedule must be submitted and a new agreement reached.

3.10 *Moderation in a Call.*

3.10.1 When a Presbytery are prepare to moderate in a Call, they fix a day and hour for doing so. Notice of the day and hour and intended procedure must be given from the pulpit of the vacant congregation by someone appointed by the Presbytery for the purpose, seven days intervening between the notice and the day appointed. The Presbytery must moderate in a Call at large, except in cases in which clear intimation is given of an harmonious desire for a person named, when moderation in a closed call is competent. In either case it is the first duty of a Presbytery when convened to meet with the congregation to ascertain that the notice of the meeting was duly served and that a certified copy of the congregation's Communion Roll is before them. Then the Moderator (or Moderator pro tem.)

The Presbytery

conducts public worship and at its conclusion explains the object of the meeting and the procedure to be followed. Procedure is as follows:

(1) ***In an Open Call (Call at Large):*** The clerk of Presbytery reads the Form of Call without specifying the person to whom it is to be addressed. The Moderator then invites the congregation to elect the person whose name will be inserted in the Form. This election is vested in the communicants named in the congregational roll and present at the meeting. The agreed name is then entered in the Form of Call and all qualified communicants are asked to subscribe it. Others, being regular attenders in the congregation and of sufficient maturity (generally interpreted as 16 years or older), are invited to sign a Form of Concurrence in the Call. When the Call and Concurrence have been signed by all present who wish to do so the Moderator attests it. Then the Presbytery must consider whether or not to sustain the Call.

If the Call has been subscribed by a large number of communicants on the Roll in proportion to the whole number and if no dissents have been given in the Presbytery sustain it in ordinary cases and it is usual to entrust the forms to the care of the Kirk Session for a limited period in order to the obtaining of additional signatures from eligible people not present at the meeting. If, however, there are dissents implying serious division in the congregation, the Call cannot be sustained unless signed by a majority of all members on the Communion Roll whether present or absent and even in that case the Presbytery may find it necessary to refer the matter to the Superior Courts (Act IV, 1859). No appeal sists procedure until a Presbytery has moderated in and sustained a Call (Act II, 1886).

(2) ***Closed Call:*** This differs from the preceding in that the name of the minister to be called has already been agreed upon at a congregational meeting and in their edict the Presbytery have intimated to whom the Call will be addressed. It is therefore competent in this case for members of the congregation who cannot be present at the meeting to moderate in the Call to give written authority (a mandate) to persons who can attend to sign the Call or Concurrence on their behalf. The same rules as noted in connection with an Open Call apply to whether or not the Presbytery sustain the Call. But as absent members have had opportunity to sign by mandate it ought not to be necessary to leave the Call with the Kirk Session for further signatures. Nevertheless, this is frequently done and it would also seem proper to allow additional signatures by mandate.

3.10.2 ***Call to Probationer or qualified Minister at large:*** If the Call is sustained at the time when it has been moderated in, and if the person called is a Probationer or a qualified Minister without any fixed charge, and if he is present, the Call is

The Practice of the Free Church of Scotland

put into his hands, and he is asked whether he accepts or not. If he is absent, it is sent to him as soon as possible. Previously to forwarding the Call, the Presbytery may entrust it to the Kirk Session to procure additional signatures.

3.10.3 *Dissents and Reasons for Objection:* Dissents from a Call can be received only if they are given in immediately after the Call has been attested by the Moderator. If they are accompanied by reasons, they must be judged on by the Presbytery, either at that meeting or at a special adjourned meeting held for the purpose. The fullest opportunity must be given to the members on the roll for stating their objections of any kind. When the objections require special investigation, the consideration of them must be adjourned, and they must be considered at a subsequent meeting, to which all parties are summoned *apud acta*, that is, they are summoned through announcement made to them in open court by the Moderator or the Clerk before the business of moderating in the Call is closed.

If the objections do not affect the moral character or the orthodoxy of the Probationer or Minister to whom the Call is addressed, the Presbytery may judge of them, and come to a determination respecting their validity, after hearing all parties, and taking such evidence as they may procure or think needful, without adopting such formal procedure as is requisite when grave personal charges are brought forward. But when an objection made is seen to involve such a charge, that is, any charge affecting the orthodoxy or moral character of a Minister or Probationer, the Presbytery must insist upon the objectors either framing a libel and proceeding with it in the usual form, or abandoning the objection. Of course, if a *fama* were found by the Presbytery to prevail against the person called, it might be necessary to suspend procedure until they have disposed of it, even though no objectors should take the responsibility of framing a libel.

The Presbytery may decline to sustain the Call, either on the ground of the *number* of dissents without reasons, or on the ground of the *weight* due to the reasons or objections adduced. If any such judgment of the Presbytery be neither appealed from nor complained against in due form, or if the judgment be affirmed by the Superior Court, the whole proceedings as to the particular Call in question fall to the ground, and in these circumstances, a new election must take place involving a different minister.

3.10.4 *Call to Probationer:* If the Call is to a Probationer, the Presbytery must satisfy themselves with regard to his fitness for the work of the ministry. This is done by requiring the Probationer to undergo trials for ordination. Act XIII, 1982 states that it is within the competence of a Presbytery that sustains a Call to a probationer, if it so desires, to accept his Certificate of Licence as affording satisfaction with regard to academic requirements, knowledge of Scripture and grasp of Confessional doctrine; and to make trials for ordination largely catechetical, with special attention to Pastoral Theology, especially in cases where the Presbytery

The Presbytery

that sustains a call is also the Presbytery that has recently licensed the probationer. Further the General Assembly enact that no Edict appointing ordination is to be authorised before such trials are sustained.

If, after these trials, the Probationer called is not found qualified, and the Presbytery decline to sustain the trials, they ought to frame their Minute so as to put the Superior Court in clear and full possession of the grounds on which their judgment proceeds, and to enable a person appealing or complaining to state with distinctness his reasons of appeal or complaint. These grounds must not involve any charge of heresy, because **that**, if alleged and maintained, can be proceeded with only by libel. If the judgment of a Presbytery declining to sustain trials for ordination be not appealed or complained against in due form, or if it be not reversed by the Superior Court after appeal or complaint, intimation must be made to the Congregation that the Probationer called has not been found qualified, and that a new election must take place.

3.10.5 *Call to Ordained Minister:* If the Call which is sustained and accepted of is to an ordained Minister eligible for Call, not having a fixed pastoral charge, and not being a Professor of Theology, no trials being required, and there being no other ecclesiastical impediment, the Presbytery may proceed without delay to appoint the day for the induction.

3.10.6 *Call to Minister in another Presbytery:* A sustained Call to a Minister holding a charge in another Presbytery is not sent to him but to the Clerk of the Presbytery of which he is a member. The judgment of his Presbytery, or of a Superior Court, in favour of his removal to the new charge must be obtained. To obtain this the Calling Presbytery and congregation have to follow certain procedures. These are:

(1) The Calling Presbytery appoint one or more of their number to prosecute the Call, that is, to argue the case for the Call before the other Presbytery. The usual practice is that the interim-moderator and a member of the calling congregation's Kirk Session are appointed. But Act XXXIV, 1976, allows that if the calling congregation are prepared to forego their right of appeal in the event of an adverse judgment, they may be content to forward written reasons in support of the Call.

(2) The Calling Presbytery draw up Reasons for Translation, or authorise those appointed to prosecute the Call (referred to as Commissioners) to do so. The Reasons are signed by the Commissioners, and together with relevant extract minute furnished by the Clerk of Presbytery, are forwarded to the Clerk of the other Presbytery.

(3) The Commissioners appointed to prosecute the Call ascertain when the Presbytery of the called minister is to meet and dispose of the Call.

The clerk of that Presbytery notifies the minister and Kirk Session con-

The Practice of the Free Church of Scotland

cerned and supplies a copy of the Reasons for Translation, but not the Call itself. The Kirk Session consults the congregation and proposes the case to be presented to the Presbytery on their behalf. If there is sufficient time for these matters to be dealt with before the next ordinary meeting of Presbytery, the Call may be disposed of at that meeting. If time does not allow of those preparatory activities, the Call will be tabled at the first ordinary meeting of Presbytery when a date for disposing of it will be decided and all concerned duly notified.

3.10.7 Disposal of Call: On the date at which the Presbytery have resolved to dispose of the Call, the Commissioners prosecuting it and those of the congregation resisting it are called to the Bar of Presbytery, and the procedure follows that of an appeal except that the minister called, not being at the Bar, may be heard at any stage if he so desires. Otherwise Commissioners prosecuting the Call are heard and then those representing the congregation resisting the Call, with a right of reply being granted to the Calling Commissioners. Questions may be asked of either party by members of Presbytery. Then the called minister is asked to declare his mind. After the Presbytery have engaged in prayer, they discuss the expediency of the translation, and in the light of that discussion resolve whether or not to place the Call in the hands of the minister concerned. Obviously two motions are competent, and the Presbytery must resolve between them. These are:

- (1) The Presbytery consider the translation expedient and agree to place the Call in the hands of Mr
- (2) The Presbytery consider the translation inexpedient and agree not to place the Call in the hands of Mr

If the first motion is agreed and there is no complaint or appeal, the Call is placed in the hands of the minister concerned. If he then accepts it, the Presbytery formally agrees to the translation and charge the minister concerned to await instruction from the Calling Presbytery.

If the second motion is agreed, the Call is not given to the minister concerned. This judgment is intimated to parties at the Bar, and those who prosecuted the Call may enter an appeal against it and present reasons then, or within ten days. In such cases it is usual to enter an appeal in the knowledge that it may be abandoned later if the Calling Presbytery and/or congregation so instruct.

Whatever the outcome Commissioners who have prosecuted a Call are bound to report the outcome to their Presbytery at its first ordinary meeting thereafter. If there is no impediment by way of appeal, the date of induction may then be fixed.

3.11 Procedure in Appeals

3.11.1 If there is an appeal or complaint intimated against a decision in favour of a Translation, the Presbytery which has agreed to the translation ought to instruct their Clerk to intimate to the Calling Presbytery, through their Clerk, whether

The Presbytery

Reasons of Appeal of Complaint have been lodged in due time or not, and also to intimate to them immediately the fact of the appeal or complaint being otherwise fallen from, if that should occur at any period after the Reasons have been duly lodged. Pending the outcome of the appeal no date of induction may be fixed.

But if it be certified to the Presbytery prosecuting the Call by the Clerk of the other Presbytery, that reasons of appeal or complaint have not been lodged in due time, or that the appeal or complaint has been subsequently fallen from, or if the Superior Court shall, in due form, have intimated or caused to be intimated to the Presbytery prosecuting the Call, that they have dismissed the appeal or complaint, and affirmed the sentence in favour of the Translation, then the Presbytery prosecuting the Call may fix a date for the induction.

3.11.2 If the decision of the called minister's Presbytery be adverse to his translation, it is usual, as has been noted, for the calling Commissioners to intimate an appeal. It is also open to the minister or any member of the Presbytery to complain against this decision. All these facts will be included in the report of the calling Commissioners to their Presbytery and the prosecution of their appeal or its abandonment will depend upon the decision of the Calling Presbytery and/or Congregation. If the Presbytery continue to prosecute that appeal, or if the Congregation calling continue to prosecute an appeal on their own part, or if any member of the other Presbytery continues to prosecute his dissent or complaint, no further step toward the filling of the vacancy can be taken until a decision has been obtained from the Superior Court. But if the Presbytery falls from its appeal, and if no other appeal and no complaint is prosecuted, or if the Superior Court intimate that they have affirmed the adverse decision, the Presbytery must intimate to the Congregation in due form the necessity of steps being taken for a new election.

3.12 ***Call to Minister in same Presbytery:*** If a sustained call is to an ordained Pastor of a charge within the bounds of the same Presbytery which has sustained the Call, the procedure is the same in principle with that adopted in the case already detailed. The complication of Commissioners from one Presbytery to another is avoided. In sustaining the Call, the Presbytery take care not to commit themselves to the propriety of the Translation. Due intimation is given to the Minister called, and to his present Congregation, as in the other case. Commissioners from both Congregations appear at the bar of the Presbytery on the appointed day, and matters proceed to a decision subject to the same rights of appeal or complaint as already noted.

3.13 ***Call to a Professor:*** If a sustained Call is to a Professor in the Church's Theological College, it should be brought in due form before the Presbytery within whose bounds the College is situated, presently the Presbytery of Edinburgh and Perth. Due notice should be given to all parties concerned (that is, the calling

The Practice of the Free Church of Scotland

congregation and Presbytery, the Training of the Ministry Committee and the College Senate). These should be given opportunity to appear and state their views, as in the case of an ordinary translation. Inasmuch as the appointment of a Professor is by Act of the General Assembly it would appear to be beyond the power of lesser courts to loose him from that appointment. The practice is therefore that Presbytery refers the matter with or without a recommendation to the General Assembly if no ordinary meeting of Synod intervenes. If an ordinary meeting of Synod intervenes the reference is to that Court which passes it on to the General Assembly.

3.14 ***Unduly Prolonged Vacancy:*** When a vacancy has endured for two years or longer and no action has been taken to secure a settlement, the Presbytery having oversight must confer with the congregation to encourage them to proceed to an election as soon as this can be harmoniously achieved (Act X, 1977).

3.15 ***First Edict:*** When a Presbytery fixes a date for the ordination and induction of a Probationer or the induction of an already ordained minister, it must give public notice of its intention to the congregation and the public generally. This is done by issuing an edict which is a formal document stating the date, time and place at which the Presbytery is to meet, certifying that if at the date mentioned no substantiated objection to the life or doctrine of the Probationer/Minister has been received the Presbytery will proceed to the ordination/induction. The Presbytery instruct that this edict be read at public worship on the Lord's Day in the congregation concerned. At least seven clear days must intervene between the reading of the edict and the meeting of Presbytery at which objection may be received.

3.16 ***Second Edict:*** At the time named in the first edict, the Presbytery, having been constituted, calls for what is designated "the return of the edict", an expression which implies a report that it has been duly served. If no objection which can be substantiated there and then has been received the Presbytery has a further edict proclaimed to the Congregation, three times. This edict is in similar terms to the first and tells that the Presbytery is now met and that objections if made must be substantiated instantly. In the case of a substantiated objection proceedings are arrested without the necessity of a libel at this stage. This, however, is a very rare occurrence. When no objections are given in or when they cannot be instantly proved, it is the duty of the Presbytery to proceed with the ordination/induction.

3.17 ***Ordination/Induction Service:*** The ordination/induction service begins with public worship conducted in the usual manner with sermon by the Moderator or Moderator *pro tempore*. At the conclusion of the worship service there is read a narrative of the proceedings followed in the filling of the vacancy. The minister-elect is then asked to stand and under reminder of Act V, 1932, to respond to the appointed questions and to sign the Formula in face of the Congregation. The

The Presbytery

answers having been satisfactory and the Formula having been signed, the Pastor-elect, if a Probationer, kneels, and the Moderator, coming down from the pulpit, ordains him to the ministry with solemn prayer and imposition of hands. It is the practice for the Presbytery to invite other ministers of the Church present to join them in the act of laying on of hands. At the conclusion of the prayer the Moderator declares the ordinand ordained to the holy ministry and by use of a set form of words adjusted to the type of Congregation, inducts him to the charge and to a seat in the Presbytery and along with other members of Presbytery gives him the right hand of fellowship.

In the case of a previously ordained minister the same questions must be answered and the same Formula signed. That being done the Moderator leads in prayer before inducting the minister to the charge and to a seat in Presbytery.

After the induction brief addresses of counsel and encouragement are given in turn to the new minister and the Congregation. These addresses may be given by the Moderator or by others appointed by the Presbytery. The new minister's name is then added to the Roll of Presbytery. The service is then concluded with praise and prayer.

3.18 **Notification:** The Clerk of the Presbytery which has inducted a minister removed from another Presbytery should immediately inform the Clerk of that Presbytery that the induction has taken place. Until informed of this fact that Presbytery may not declare the minister's previous Congregation vacant.

4. *Special Cases.*

4.1 **Missionaries:** Ordination without reference to a particular pastoral charge, or without reference, at least, to some position or function held to be equivalent to that of a particular pastoral charge, is contrary to the practice of the Church. But it is not unusual for a Presbytery to be instructed by the General Assembly to take a Probationer on trials for ordination with a view to missionary service in some designated country. The current practice is for the newly ordained minister to be seconded to a Church in the country of service. If there should be no Church existing the ordination could still be with a view to missionary service. Though in strict procedure it is the duty of the Presbytery to satisfy itself with respect to the nature of the appointment, the position of the parties making it, the sphere of action proposed to be entered on, and the provision arranged or in prospect for the due support of the Minister or Missionary, after he has entered on it, it may be assumed that the General Assembly have been satisfied on these points by the Missions Board. So far as trials and the act of ordination are concerned, they must take the same steps as in ordinary cases. The serving of an edict in the usual manner is of course dispensed with. But consistency of principle would seem to require public notice of the Presbytery's intention to be duly given, that anyone may have sufficient opportunity to bring forward and substantiate an objection to

The Practice of the Free Church of Scotland

the life or doctrine of the person proposed to be ordained.

4.2 Professors of Theology: Professors of Theology are appointed by the General Assembly and by their instruction inducted by the Presbytery within whose bounds the Church's college is located. Should a Probationer be appointed to a College Chair the Presbytery is required to subject him to trials for ordination with a view to ascertaining his fitness for the particular function to which he has been appointed. In these examinations due weight must be given to the fact of his appointment by the General Assembly (see Act V, 1852).

4.3 Appointments: The circumstances of a vacant congregation may be such as to prevent their receiving clearance from the Sustentation Fund Committee to call a minister in the regular way noted. But it may be possible after consultation between congregation, Presbytery and an Assembly Committee for the services of a minister to be obtained for a limited period of five years extendable if the progress of the Congregation so warrants. The following are situations that are met by appointment, the full details of procedure being noted in the Acts of Assembly indicated. In each case the procedures for induction comply as nearly [corrected text] as possible with these noted.

4.3.1 Redevelopment Charges: These are designated by the General Assembly on recommendation from the Sustentation Fund Committee who are empowered, in the event of a vacancy, and in agreement with the Presbytery of the bounds to appoint a person suitably gifted for the task of redevelopment to the pastoral oversight of the redevelopment charge (Act XXXIV, 1988).

This Act also envisages situations in which charges already settled may be designated redevelopment charges upon certain undertakings by the minister.

4.3.2 District Ministers: Arrangements have been approved by the General Assembly that allow a plurality of small congregational groups, not necessarily within the bounds of one Presbytery to have the services of a District Minister by appointment of the Sustentation Committee in agreement with the Presbyteries concerned. The details are listed in full in Act XIX, 1983, amended by Act XXV, 1989, to which reference should be made.

4.3.3 Church Extension Charges: These result from successful outreach work and reach the stage of being allowed the services of a minister when officially designated Church Extension Charges by the General Assembly on recommendation of the Church Extension Committee. The minister deemed fitted for the work is appointed, initially for five years on agreement of the Committee, the Presbytery of the bounds and a majority of the membership of the Congregation. Details are in Act XXVII, 1989.

4.3.4 Church Planting: In an effort to reach out to areas not served by the Free Church or by any church fully committed to Reformed standards, arrangements have been made whereby the Committee on Church Extension may support a

The Presbytery

minister for five years in carrying out evangelistic and church planting work. The minister is inducted to the work by the nearest Presbytery at the request of the Committee, and the minister has a seat on that Presbytery (Act XXVIII, 1989).

4.3.5 ***Assistant Ministers:*** Certain Congregations may be granted the right to have an assistant minister whose appointment will be by the Presbytery after consultation with the Congregation and the processing of an invitation as though it were a Call. This appointment is for one year, renewable by Presbytery on application by the Kirk Session but having a maximum duration of three years. The assistant is ordained/inducted in the usual way and has a seat in Presbytery (Act V, 1986).

5. ***Retirement of Minister.***

5.1 By long established tradition ministers were inducted to charges *ad vitam aut culpam*, that is, for life unless removed as the result of a disciplinary process. This tradition is still maintained in regard to ministerial status but no longer in regard to tenure of a particular charge. In some cases already noted, induction is for a specified period which may or may not be extended. By Acts of Assembly Professors were obliged to retire on 30th June following their 70th birthday (Act XV, 1966) and this obligation was extended to ministers in pastoral charges inducted subsequent to the passing of Act I, 1989. This Act fixed 30th September following the 70th birthday as the latest date for retirement. In all cases retirement is permissible on or after the 65th birthday.

5.2 A minister desiring to retire from his charge when he has attained the specified age must inform his Kirk Session of his intention to retire and have minuted in the Session Record an undertaking to resile from his rights in the courts of the Congregation. The application is processed through Kirk Session and Presbytery to the Church's Pensions Committee for award of pension in accordance with the scheme approved by the General Assembly. For their part the Presbytery in supporting this application must take note that the agreement to resile from rights in the congregational courts has been duly minuted by the Kirk Session. The application is then forwarded to the relevant Committee. After the specified retirement date the Congregation is declared vacant (Act I, 1981). Though now, in effect a *minister emeritus*, the minister retains a seat in Presbytery. All Ministers not having pastoral Charges are eligible as Ruling Elders in the Congregations to which they attach themselves as communicants. They may not, however, represent the Kirk Session in Presbytery or Synod nor may they be commissioned as elders to the General Assembly (Act IV, 1991).

6. ***Resignation of Ministers:*** A minister who wishes to resign his pastoral charge because of ill-health or other reason not affecting his conduct or doctrine must tender his resignation to his Presbytery. The Presbytery is bound to investigate the reasons for resignation and may appoint a Committee to do this in detail and,

The Practice of the Free Church of Scotland

if appropriate endeavour to resolve difficulties which may have occasioned the resolution to resign. If the desire to resign persists and the Presbytery have no knowledge of any circumstances or *fama* which might involve disciplinary action, and therefore could preclude acceptance of resignation, it must accept the resignation. In the meantime the Congregation will have been informed of their minister's action. Upon acceptance of the resignation the Presbytery will, by extract minute, inform the Principal Clerk of Assembly and instruct him to include the name of the resigned minister on the Roll of Resigned Ministers or on the Register of Ministers without Charge. The Congregation will be declared vacant.

The normal procedure is for the name of the resigned Minister to be placed on the Roll of Resigned Ministers. Only when positive reasons conforming to Act XIII, 1990, can be adduced may the name be placed on the Register of Ministers without Charge. Ministers whose names are on the Register are available for Call, those on the Roll are not. Retention on the Register is for three years, extendable on cause shown for a further three years but no longer. Names on the Roll are retained indefinitely unless removed on grounds specified in the Act.

7. ***Absence from Charge:*** From almost the time of the Reformation it has been a rule of the Scottish Church that a minister should reside in the parish he serves and prolonged absence has been disallowed. In certain situations, however, it becomes necessary and acceptable that the minister be granted what is called leave of absence. Application for leave of absence must be made to the Presbytery who must be satisfied that arrangements for the pastoral care of the Congregation are adequate. The Presbytery must also be satisfied as to the reasons prior to granting leave of absence. Most frequently this leave is sought at the behest of an Assembly Committee to enable the minister to undertake work elsewhere on their behalf. But it is possible for the minister to request study leave, or leave to attend to some urgent family business. By a long-standing practice Presbyteries do not grant leave of absence for longer than six months in the first instance. Upon granting leave of absence Presbyteries appoint an interim-moderator of the Kirk Session which is temporarily bereft of its Moderator.

8. ***Sick Leave:*** Even during times of illness a minister is held to be responsible for the spiritual oversight of his Congregation and this involves, among other things, arranging pulpit supply. In present circumstances sickness allowances paid by the Department of Social Security contribute to the costs of these arrangements. Advice regarding actual procedures which may change from time to time is available from the Church's General Treasurer.

(Rules and procedures in longer-term illness which require intervention by Presbytery granting sick-leave and by the central Committee responsible for payment of stipend are presently being formulated).

Special procedures have been approved to deal with the situation involving

The Presbytery

mental illness on the part of the minister. These are detailed at length in Act I, 1936.

9. ***Presbyterial Counselling:*** It is held to be the duty of Presbyteries to deal with the members privately in a friendly manner with respect to their shortcomings, so as to avert, by timely admonition, the necessity of more formal procedure at a future date. It is still held to be the duty of the brethren to stir one another up in the common faith.

10. ***Breakdown of Relations:*** A Presbytery may become aware that a Congregation within its bounds has fallen on troublous times indicated by marked fall-off in attendances at public worship, reduction in contributions to Church funds, alienation of office-bearers and such like. In these cases it is the duty of the Presbytery to take action to try to resolve difficulties and to restore harmony and the general health of the Congregation. As it makes these efforts Presbytery may become convinced that there is a breakdown in relations between minister and people, not involving moral delinquency of any sort, but due to certain incompatibilities of temperament. In that case and after prolonged effort to resolve the situation Presbytery may feel duty bound to sever the pastoral tie and loose the minister from his charge. The protracted procedures applicable in this situation are detailed in Act I, 1990.

11. ***Discipline:*** The Presbytery is responsible for the pastoral care of its ministers and when necessary this involves the application of disciplinary procedures which will be dealt with in a later chapter. Discipline can be exercised on a personal and informal level where that is appropriate and likely to have beneficial results. It may move to more serious levels involving censure, rebuke and even suspension or deposition according to the gravity of the case.

12. ***Regular Helpers:*** Although the Free Church of Scotland holds that ideally the functions of the pastoral office should be exercised only by those specially set apart, that is ordained to that office, necessity has compelled the employment of others as regular preachers and shepherds of Congregations.

These were in earlier days known as Preachers or Catechists but now such help is given by Resident Lay Preachers. By an Act of General Assembly only men acceptable as elders in the Congregation may so function (Act X, 1981).

Besides those in full-time employment as noted above the Church maintains a list of people able and willing to supply pulpits from time to time and it is the responsibility of Presbyteries to recommend people for this list. Interim-moderators have the responsibility of procuring suitable men to supply the vacant pulpits for which they are responsible (Act XV, 1972).

13. ***Preaching Stations:*** A group of people may regularly meet together for public worship and their circumstance may be such that they need the intervention of a Presbytery to secure the regular and orderly maintenance of gospel preaching

The Practice of the Free Church of Scotland

and the administration of the sacraments. In such a case Presbytery may recognise the meetings as a Preaching Station and either place the station under the care of a neighbouring Kirk Session or appoint a minister and elders from Kirk Sessions within the bounds. The Preaching Station does not rank as a pastoral charge and those appointed to fulfil the duties of a Kirk Session do not appoint one of their number as Commissioner to Presbytery or Synod nor can they furnish the requisite certificate to an elder given a Commission to the General Assembly (see Act XIII, 1863).

14. ***Sanctioning of Pastoral Charges:*** In strict theory it is part of the function and within the competence of a Presbytery to recognise and sanction charges within their bounds that may call ministers. But the interests of the denomination as a whole and the general dependence on central funds necessitate that decisions to sanction charges shall be made only by the General Assembly, upon recommendation by Presbyteries. This was recognised as early as 1849 in a Class I Act.

15. ***Special Diets of Worship:*** Presbyteries have the right to instruct that special worship services be held in each congregation within the bounds when they deem that to be appropriate, for example, for special days of thanksgiving and days of prayer, and also for special collections for particular causes to be made. This right, however, should be sparingly exercised lest Presbytery be deemed to impinge on the responsibilities of Kirk Session, or to embarrass their relations with Superior Courts especially the General Assembly.

16. ***Presbytery Expenses:*** Long established practice has recognised the right of Presbyteries to require a reasonable contribution from each Deacons' Court to meet the expenses of Presbytery. Presbyteries usually agree upon an annual budget and assess what each Deacons' Court should contribute.

17. ***Presbytery Committees:*** Presbytery may appoint Committees at any time to give detailed consideration to certain items of business and to report to a subsequent meeting of Presbytery at which decisions will be agreed. In matters of urgency it is competent for a Presbytery to empower a Committee to resolve and act on its behalf. By recommendation of the General Assembly all Presbyteries should appoint a Committee with the responsibility of reflecting on the general strategy and possible actions for growth and extension within the Presbytery. Such a Committee is specifically involved in the initial stages of research and action leading to requests for the granting of Redevelopment status to any Congregation.

18. ***Consultation with Assembly Committees:*** Presbyteries are responsible to take pastoral superintendence of all Congregations within their bounds and this can from time to time lead to proposals to change the status of Congregations which in turn will require consultation with Assembly Committees. In view of this the Assembly has ordained that the Conveners and Vice-conveners of the

The Presbytery

Sustentation Committee and of the Church Extension Committee shall jointly confer with Presbyteries at least once every five years. Presbyteries are required to prepare outline proposals as a basis for discussion at these meetings (Act XXIV, 1989).

(B) REVIEW

Each Presbytery is duty bound to ensure that all Kirk Sessions within the bounds discharge their functions in an acceptable manner. This is not done in an intrusive or inquisitorial fashion but in an orderly way as indicated in the procedures to be outlined in the following paragraphs.

1. ***Kirk Session Records:*** Once each year, usually in February, Kirk Sessions are required to submit their records for review by Presbytery. At the same time an updated copy of the Communion Roll duly certified by Moderator and Clerk is submitted. Besides this annual review Presbytery may, if due cause be shown, require records to be submitted at any time.

The interest of Presbytery in reviewing records is to ascertain that they are neatly and properly kept and are 'correct in form and substance'. This means that records are tidy and legible, that each topic dealt with is easily identified, by marginal reference in handwritten minutes or by an appropriate style in typed minutes, and that each minute has been signed by Moderator and Clerk. It means also that each minute shows that the court was duly constituted and closed with prayer, that all the topics dealt with were within the province of the Session, and that procedures were according to the laws of the Church. Correct in form and substance does not mean that Presbytery can alter the record of what actually took place in Kirk Session. It means simply that what took place was within legal proprieties.

If Presbytery finds that a decision by the Kirk Session was wrong in law, it may reverse the decision and do what it can to mitigate the consequences of the wrong decision. If procedures followed by Kirk Session and decisions made are, in the view of Presbytery, in breach of Church law, it may order the deletion of the relevant comments. But before pronouncing adverse judgment as noted here, Presbytery must summon the Kirk Session to its bar to be heard as a party with the right of appeal to Synod or General Assembly.

Where deletion of part of a Session minute is ordered it can be done by rendering the relevant part illegible or by excision of the passage. Obviously excision is required only if the offending passage is lengthy. In either case a marginal note must indicate how much has been deleted/excised and the decision of Presbytery must be entered in the Record.

2. ***Deacons' Court Records:*** These records are also subject to annual review

The Practice of the Free Church of Scotland

by Presbytery. In this case Presbytery is concerned to note that records of financial transactions have been duly audited; that moneys have been properly allocated; and that the proceedings of the Deacons' Court have been in accordance with the laws of the Church. As in the case of Kirk Sessions, where Presbytery finds faults with the proceedings the Deacons' Court is summoned to the bar of Presbytery before a formal decision is pronounced.

3. *Petitions to Presbytery.*

3.1 Members of the Church may bring matters of concern to the notice of Presbytery by means of Petition provided that:

- (1) the Presbytery is the court of primary reference, that is, the particulars referred to should not first have been brought before a Kirk Session;
- (2) the matter could not come before the Presbytery by way of complaint or appeal against a decision of a Kirk Session.

3.2 If the subject matter of the Petition is such as should in the first instance have been brought before a Kirk Session, but if the Petitioner alleges obstruction by the Kirk Session by their refusal to entertain his plea thus denying him right of access to Presbytery by appeal the Presbytery deal with it, summoning both the Petitioner and the Kirk Session to its bar.

3.3 When disputes or difficulties have arisen in a Congregation, which do not involve any serious personal charge, but which cannot be constitutionally adjusted by the Kirk Session in consequence of the Minister being concerned in them or from other causes, it is competent for any parties connected with the Congregation to petition the Presbytery on the subject. The Petition may ask for a Presbyterial visitation, or for any other method of interference by the Presbytery that may be competent and suitable. Before the Petition can be disposed of, all parties referred to in it, or affected by it, must be summoned, with due notice, to the bar, that they may be heard for their interests.

3.4 The constitutional method of bringing before the Church any question seriously affecting the character or the orthodoxy of a Minister or a Probationer is by a Petition to the Presbytery, unless such question be originated in the Presbytery itself, or in the Synod or General Assembly; or unless the parties otherwise raising it take upon themselves the responsibility of preparing and tabling a Libel for the consideration of the Presbytery. (See Chapter V Part IV.2.)

3.5 A Petition to the Presbytery is competent, either by the Kirk Session, or by the Deacons' Court, or by any member of the Congregation, or by any person concerned about its prosperity, if the object aimed at is one which the Presbytery alone can accomplish, or which must be originated in the Presbytery. Under this head may be reckoned Petitions for the institution of Stations, for the sanctioning of Charges, for the creation of Kirk Sessions, and for the erection of Churches or Manses.

The Presbytery

3.6 A Petition is competent which complains of any procedure in a Deacons' Court when the complaint is shown to be on the alleged ground that the procedure was *ultra vires*, or contrary to the Acts of Assembly.

3.7 As in the case of complaints and appeals so in the case of Petitions the person(s) originating the action are heard first at the bar of Presbytery and others subsequently with a right of reply granted to the first party. When parties are removed from the bar they may not sit in the reviewing court even though otherwise members thereof but if the court is meeting in public they may continue to hear proceedings. The court discuss the issue raised and come to a decision. Parties are summoned again to the bar and the decision announced to them. They may acquiesce in the decision or not as conscience dictates. If they do not acquiesce they may appeal to the Superior Court.

Note: A Presbytery may reject any Petition, without calling or hearing parties, on the ground that it is unsuitably or disrespectfully worded, or, without hearing parties *on the merits*, on the ground that its prayer cannot be competently granted by the Presbytery.

4. *Presbyterial Visitation.*

4.1 In the discharge of its Pastoral responsibility for Congregations within the bounds a Presbytery is called upon to visit these Congregations from time to time.

Visits may be rendered necessary by a Petition from a Kirk Session, Deacons' Court or others connected with a Congregation. Presbytery may also deem it necessary to visit a Congregation when apprised of situations that may otherwise develop in ways prejudicial to the Congregation or the Christian cause.

4.2 Apart from these special occasions Presbyteries are required by Act of Assembly to visit each Congregation within the bounds every five years. They must agree upon a rotation of visits and inform Synod of it and from year to year report progress on its accomplishment. Visits may be by the Presbytery as a whole or as represented by a Committee.

Meetings are to be held with the Minister, the Kirk Session, the Deacons' Court or Finance Committee and with the Congregation as a whole. Due notice of the meeting must be given to all concerned so that issues of importance may be discussed. The purpose is not to be inquisitorial but to find how Congregations and office-bearers may be helped by Presbytery. The General Assembly has recommended the use of set questionnaires, copies of which are available from the Church Offices. These questionnaires may be amended and modified as Presbyteries deem best. The details of Assembly recommendations are found on page 45 of Assembly Proceedings 1988.

5. ***Responsibility for Buildings:*** One of the items which must figure in a Presbytery's regular visitation of a Congregation is the state of Church and manse buildings. By Act XXXI, 1988, Deacons' Courts are charged to maintain their

The Practice of the Free Church of Scotland

buildings in good order and to have them inspected by a qualified person so that a Buildings Return may be completed prior to each quinquennial visit. Grants from central funds will be refused if the Assembly Committee is not assured that a Buildings Return has been duly received by Presbytery.

6. ***Ministers' Expenses and Vacation:*** Congregations are expected to refund to their ministers expenses incurred in the discharge of pastoral duties. The items which figure in pastoral expenses as listed by Act of Assembly include: telephone, communion expenses, car and/or travelling expenses, a fair proportion of manse heating and lighting and the cost of one month's supply in respect of the minister's annual vacation.

In the case of a vacancy the Interim-moderator shall have refunded to him by the Congregation all travelling and other expenses incurred by him in discharging such duties on behalf of the Congregation as would normally fall to be undertaken by the minister if the charge were settled (Act XII, 1978 and Act IX, 1980).

7. ***References, Complaints and Appeals:*** It is the duty of the Presbytery to take into their consideration, at the first convenient opportunity, any case of Reference, Complaint, or Appeal, which has been duly transmitted to the Presbytery Clerk, with respect to the procedure of any Kirk Session within the bounds.

7.1 Reference.

7.1.1 When a Kirk Session is unsure as to how it ought to proceed in regard to a matter brought before it, it may refer the matter to the Presbytery for its advice.

Uncertainty may arise with regard to the interpretation of the law and practice of the Church, or from consideration of particular circumstances associated with a question. Reference to Presbytery is not designed to relieve a Kirk Session of its responsibility. It may indeed be censured by Presbytery if that court takes the view that the Kirk Session should have resolved the matter without recourse to the higher court.

7.1.2 A reference may be accompanied by observations or tentative recommendations by the Kirk Session or it may be passed on without comment (*simpliciter*).

7.1.3 When a Kirk Session resolve to refer a matter to Presbytery their decision may be challenged by one of their number who intimates a dissent and complaint, or if it be a matter affecting parties at the Bar they may appeal against the decision to refer. In any case the Kirk Session must forward extracts of minutes relating to their procedure and any other documents laid before them. The Kirk Session and any complainant or appellant are all then summoned as parties to the Bar of Presbytery.

7.1.4 When Presbytery meet to consider the matter, the Clerk of Presbytery reads the documents that have been transmitted in the case. Parties are then called, and the names of the persons who severally appear for each of the parties are

The Presbytery

minuted as so appearing. If any party having been duly cited does not appear when called, and no adequate cause for non-appearance is assigned, that party is held to have given up the cause, and unless the Presbytery find reason otherwise for an opposite course, a decision may be given against that party in absence.

7.1.5 In the case of an unopposed reference the Kirk Session is brought to the bar of Presbytery and its representative(s) are called upon to state the reference, that is, to explain the difficulty of the case as perceived by the Kirk Session. Having stated the case, they may be questioned by members of Presbytery.

7.1.6 Presbytery then resolve whether to sustain the reference or dismiss it, and dismissal may be accompanied by censure if the Presbytery see fit. If the reference is sustained, those members of Kirk Session who are members of Presbytery resume their seats in Presbytery.

7.1.7 The Presbytery then address themselves to the specific problem referred to them and resolve what advice should be given to the Kirk Session.

7.1.8 In the case of a reference against which a complaint or appeal has been raised the situation is more complicated. In such a case when parties are called to the Bar of Presbytery the complainant/appellant will be heard first, then the Kirk Session will state its case and the first speaker will reply. Members of Presbytery may ask questions and the Presbytery then resolve the issue as to the sustaining or dismissing of the reference. But it seems proper in this case that where the reference is sustained, the Kirk Session and the complainant should remain at the Bar and present their views on the merits. Presbytery will then come to a decision and inform parties at the Bar. Only so can all concerned preserve the right of bringing a judgment on the merits under review of a Superior Court in proper form.

7.2 Complaints and Appeals.

7.2.1 As in the case of reference the Presbytery usually hears one or two speakers for each party but when the case of two parties is perceived to be the same in substance they are dealt with as one party. The complainants or appellants are heard first and subsequently have a right of reply to the case presented by the Kirk Session. Questions may be asked by members of Presbytery. Parties are then removed from the Bar but none of them may assume a seat in Presbytery (Act III, 1973). The Presbytery deliberates and pronounces judgment.

7.2.2 The judgment may be expressed in such terms as the Presbytery thinks most suitable; but in every case of Appeal or Complaint, in which a judgment on the merits is pronounced by the Presbytery, the judgment must expressly sustain or dismiss the Appeal or Complaint, and must expressly reverse or affirm the judgment of the Kirk Session, whatever additional words or sentences the Presbyterial Deliverance may contain.

7.2.3 Parties are called in, and the judgment of the Presbytery is intimated to them.

The Practice of the Free Church of Scotland

7.2.4 If a party there and then, after hearing the intimation, acquiesce in the judgment, it is usual for him to intimate his acquiescence, and to have it minuted. If he does so in due form, he is entitled to extracts.

Note: The statements here made as to the hearing of the parties at the bar apply to the hearing of parties in cases of translation, *mutatis mutandis*. They apply also to the hearing of parties in Petitions.

(C) RELATIONS TO SUPERIOR COURTS

Just as Kirk Sessions are under the oversight of Presbyteries so Presbyteries are under the oversight of Provincial Synods and the General Assembly and the same general principles apply in these relationships.

1. A Presbytery is not allowed on its own authority to change the basis of its membership, its name, its chief place of meeting (that is, its seat) or the charges within its bounds. To effect changes in these matters Presbytery must petition the General Assembly.

2. The Presbytery is required to submit its permanent Record Book for review by the Provincial Synod and the same principles apply in this review as in that exercised by Presbytery in relation to Kirk Sessions (see section B above). No alteration of minutes once approved can be made except by authority of a Superior Court.

3. **Decisions of Presbytery:** Presbytery decisions are of two kinds: judicial and non-judicial. Judicial decisions are those come to in regard to formal cases before Presbytery. Judicial decisions cannot be revised or rescinded by Presbytery but are subject to review by Superior Courts. In non-judicial proceedings decisions may be revised or rescinded only after careful consideration introduced by notice of motion and in the light of evidence affecting the matter or in the light of consequences which were unforeseen at the time of the decision and which are deemed prejudicial to good order, equity or the interests of the Court (Act XXXVI, 1976).

4. **Effect of Dissent:** When a Presbytery has come to a decision on any matter, any member of the Court who is present and has previously moved or supported a motion against the decision may enter a dissent provided this is done immediately on the pronouncement of the decision. If reasons are immediately announced they must be engrossed in the minute of that meeting. But if reasons are given in later they are not minuted but kept among Presbytery papers. Other members of Presbytery present at the time of the decision controverted who supported the objection made, may adhere to the dissent immediately, later in the meeting or at a subsequent meeting. The affect of such dissents is not only to clear the conscience of those making them but also to secure immunity from any adverse judgment on

The Presbytery

the matter by a Superior Court.

5. ***Dissent and Complaint:*** Any member of Presbytery who has, as in the case of dissent, previously objected to a proposal before Presbytery, may upon the proposal being carried, announce his dissent and protest for leave to complain to the Superior Court. This may be the Provincial Synod or the General Assembly, whichever meets first. The rules for carrying through the dissent and complaint are the same as those obtaining between Kirk Session and Presbytery. Those complaining are entitled to such extracts as are required to bring their case before the Superior Court.

6. ***Appeals:*** Parties at the Bar of Presbytery, aggrieved by its decisions may protest for leave to appeal to the Superior Court, Provincial Synod or General Assembly as the case may be. The rules that apply are as noted in regard to appeals from decisions of Kirk Session to Presbytery. Appellants are entitled to extracts in the same way as complainants.

7. ***Reference:*** Presbyteries have a right of Reference to the Superior Court as have Kirk Sessions to Presbyteries and the same procedural rules apply. There are certain situations in which Presbyteries are required or authorised to refer to the Superior Court. These are:

(1) If, when serious division is apparent in a vacant congregation regarding the calling of a minister, the Presbytery cannot overcome the division, it is bound to refer the matter to the superior Church Courts for advice (Act IV, 1859);

(2) In connection with a Libel against a minister there are two special grounds which make reference to Superior Courts competent. These are listed in Acts IX and X, 1854 and dealt with in Chapter V of this book.

8. ***Refusal of Complaint or Appeal:*** If a Presbytery refuse to receive or record any Complaint or Appeal, it is open to the party to petition the Synod or Assembly with reference to such refusal.

9. ***Interference:*** One Presbytery cannot interfere with or review the procedure of another Presbytery. As in the case of Kirk Sessions, the only regular mode of redress for encroachment by one Presbytery on the province of another, is for the Presbytery which feels that its jurisdiction has been interfered with to petition the Synod, or, if no meeting of Synod intervene, the General Assembly. Of course such a Petition cannot be received by any Synod except the one which has jurisdiction over the Presbytery whose procedure is complained of.

10. ***Petition to Superior Court:*** It is competent for a Presbytery to petition the Synod or Assembly with regard to any subject within the competency of the Court to whom the Petition is addressed, if the subject be not one which can come up to that Court by Reference, Complaint, Appeal or Overture.

11. ***Admission of Minister or Probationer:*** Any Minister or Probationer

The Practice of the Free Church of Scotland

belonging to any other Denomination who desires to be admitted as a Minister or Probationer of the Free Church, must apply, in the first instance, to the Free Church Presbytery within whose bounds he has taken up his residence. If he be resident outwith the bounds of any Free Church Presbytery he may apply, in the first instance through any Presbytery of the Free Church. Presbyteries have a duty to interview candidates for admission and may require to devolve this duty upon others deemed suitable, if the candidate lives abroad. Presbyteries do not have powers of admission but must scrutinise the application schedule presented by the candidate and answer questions addressed to Presbyteries in the schedule and make such recommendation as they deem appropriate. These schedules are available upon application to the Clerk of the Admissions Committee and the completed schedules must be returned to him for processing through the Committee to the General Assembly, to whom the sole right of admission belongs.

12. ***Assistant Ministers:*** A congregation desirous of having an assistant minister must apply to the General Assembly through the Presbytery. Conditions which must be fulfilled before such applications can be entertained are detailed in Act V, 1986 to which reference has already been made.

13. ***Recognition of Charges:*** Applications for recognition as charges in any of the recognised categories must be made through Presbytery and the relevant Assembly Committee to the General Assembly.

14. ***Collections:*** It is the duty of Presbyteries to observe carefully all those instructions of the General Assembly which are consistent with the constitution of the Church, respecting the various collections and operations appointed or instituted by that Assembly, and carried out by means of its Committees or otherwise, for the furtherance of the Gospel at home and abroad, or for the welfare of the Church.

15. ***Sale of Buildings:*** All Petitions for authority to sell buildings which, by their title deeds have become the property of the Free Church of Scotland must be processed through the Presbytery to the Committee on Custody of Titles for submission to the General Assembly or its Commission.

Before recommending such applications Presbyteries must have before them the following extracts of minutes duly certified.

- (1) A minute of Deacons' Court proposing sale of property.
- (2) A minute of Kirk Session approving the proposals to sell and authorising the convening of a congregational meeting to consider the proposal.
- (3) A minute of the congregational meeting agreeing to the proposal to sell.
- (4) The text of the Petition. This should state clearly the reasons for sale and the desired use of the funds to be realised.

Presbyteries should be satisfied that the proposal is in the best interests of the congregation before transmitting all these documents together with their own extract

The Presbytery

minute of recommendation to the Custodier of Titles.

Subsequently the Committee on Custody of Titles scrutinises the Petition and supporting documents, obtains the advice of the Church's Law Agents with regard to any restraints or barriers to sale contained in the titles. The Committee proposes a finding to the Assembly or its Commission before which the documents are laid.

A representative of the Presbytery is expected to be present in the Court which finally disposes of the application so that he can answer questions.

Where property is being disposed of in order to provide replacement the Petition may be addressed to the Commission of Assembly. If there be no such intention the Petition must be addressed to the General Assembly.

In regard to properties which are not held in terms of the Model Trust Deed it is nevertheless desirable, and sometimes necessary, to follow the above procedures.

Petitions for sale of property addressed to the General Assembly must be in the hands of the Clerk of Assembly by 28th February. Petitions addressed to the Commission of Assembly must be in the Clerk's hands at least one month before the meeting of Commission.

16. **Overtures:** It is competent for any Presbytery to transmit what is called an Overture either to the Provincial Synod or to the General Assembly, with a view to induce the Superior Court to adopt any measure within its power. All Overtures and Returns to Overtures from Presbyteries must be sent to the Clerk of Assembly at least seven days before the meeting of Assembly.

17. **Barrier Act:** When the General Assembly contemplates legislation which will have a fundamental, and lasting effect on the Church and specifically legislation affecting the constitution of the Church it must secure the agreement of Presbyteries in terms of the Barrier Act. (This is more fully explained in the chapter relating to the General Assembly). Upon receiving the Assembly's proposals which are sent in the form of an overture, Presbyteries must fix a day to consider these and come to a decision. This decision must be a simple approval or disapproval. A qualified or partial approval is regarded as a vote against. The decision must be reported to the Clerk of Assembly by a date instructed by him when sending down the overture.

18. **Consultation with Presbyteries:** Quite apart from topics which require action in terms of the Barrier Act, the General Assembly may desire to know the opinion of Presbyteries on any matter being considered. This may be done by direct communication from Assembly or through any of the Assembly's appointed Committees.

19. **Appointment of Professors:** Presbyteries have the responsibility of nominating ministers to fill vacancies in the College. They may nominate one or more for each vacancy and must transmit their nomination together with notes of the qualifications of those named to the Training of the Ministry Committee for onward processing to the General Assembly by whom appointments are made

The Practice of the Free Church of Scotland

(Act VI, 1979).

20. *Representatives to General Assembly.*

20.1 Each year Presbyteries appoint Commissioners to the General Assembly comprising an equal number of ministers and elders. The number of Commissioners accords with a fixed proportion of the total number of Kirk Sessions, Professorial Chairs and such appointments as the Assembly have specified for the purpose within the bounds. The present regulating Act is Act I, 1942, which aims as nearly as possible to secure that the number of ministers commissioned will equal one third of the number of Kirk Sessions, etc. in the Presbytery. An equal number of elders will also be commissioned.

20.2 On the basis of the relevant Act of Assembly, the Assembly Arrangements Committee determine in January of each year, the number of Commissioners to be appointed by each Presbytery. This is communicated to each Presbytery by the Clerk of Assembly and it is open to any of them to controvert the decision and if not subsequently satisfied by the Committee to appeal to the General Assembly.

20.3 Before electing Commissioners to the General Assembly Presbytery must record in the minute of a meeting held at least ten days before the election date a formal resolution to do so. It is required also that the date fixed for the election be no later than forty days before the meeting of the Assembly and no earlier than one month preceding the first of these forty days.

20.4 In principle, election of Commissioners is by free vote of the members of Presbytery so no private practical arrangements regarding rotation of appointments can be regarded as binding or referred to in the minutes of Presbytery. Ministers are elected only from within the membership of Presbytery, but an elder from any Kirk Session within the Free Church, who is believed to be an acting elder, may be elected. In respect of each elder elected, a certificate from his Kirk Session attesting that he is actually a member of the court must be forwarded to the Clerk of Assembly. It should be noted, however, that Professors in the Church's College and ministers not in pastoral charges, even if elders in local congregations, may not be elected as elders to represent a Presbytery in the General Assembly.

20.5 The election of Commissioners to the General Assembly is regarded as of such importance as to warrant its being given priority in the agenda of Presbytery.

20.6 If a minister or elder resigns his commission or dies prior to the meeting of the Assembly, Presbytery may make a new election provided this is done before the Assembly convene (Act II, 1885).

20.7 Printed Forms of Commission are furnished by the Clerk of Assembly to the Clerks of Presbyteries. They must be exactly filled up, and read over in the presence of the Presbytery. The Minutes of Presbytery must be so drawn up as to correspond to the Form.

20.8 The Commission to a Presbytery's Representatives, attested by the

The Presbytery

signatures of the Moderator and Clerk, ought to be sent to the Clerk of Assembly as soon as convenient after the election has taken place and not later than one week before the day appointed for the meeting of Assembly.

21. ***Presbytery Records:*** Presbytery Records are liable to be called up by the Provincial Synod for revision and attestation, according to the law of the Church. They are generally required to be submitted to the Synod once a year.

22. ***Abstract of Synod Proceedings:*** An abstract of the proceedings of each Provincial Synod ought to be sent down to every Presbytery within its bounds as soon after its meeting as possible. This abstract must be read at the first Ordinary Meeting of Presbytery that occurs after its receipt, and the fact of its being read must be duly recorded.

(D) GENERAL CONDUCT OF BUSINESS

1 ***Order of Business:*** The clerk of Presbytery usually prepares a tentative agenda which can be adjusted by Presbytery as it deems best. The following points are intended for guidance and are not mandatory.

1.1 The reading of minutes usually follows the calling of the Roll and matters referred to in the minutes are either taken up immediately after the approval of the minutes or included in the agenda at the most suitable points in relation to other business.

1.2 A degree of priority is usually given to items of business which require the attendance of people who are not members of Presbytery, so that they may not have to wait an undue time.

1.3 Consideration of Overtures addressed to a Superior Court should also figure early in the agenda.

1.4 Reports from Committees appointed by Presbytery should be given precedence over business initiated by private members of the Court.

1.5 As noted in 20(5), election of Commissioners to the General Assembly should be given first place on the agenda of Presbytery on the appointed date.

1.6 In the case of meetings *pro re nata* and *in hunc effectum* if there is a plurality of items on the agenda they are taken in the order indicated in the circular calling the meeting or the minute appointing it.

2. ***Duties of Clerk:*** It is the duty of the Clerk to prepare and timeously circulate before each meeting of Presbytery a note of the items of business to come before the meeting. The usual practice is that copies of the minutes of the previous meeting are circulated at the same time. The Presbytery is not bound to consider the items of business in the order proposed by the Clerk. The Moderator will call for each item according to the agreed order.

3. ***Immediate Adjustment of Minute:*** When a matter of serious consequence

The Practice of the Free Church of Scotland

has been disposed of, the minute recording it ought to be adjusted, read and approved before passing to the next item.

4. **Motions before Presbytery:** With a view to a Presbytery coming to a decision upon any question, a Member of Presbytery must make a motion on the subject.

4.1 Consideration of suggested new legislation should be on the basis of notice of motion duly intimated. In matters the decision on which must hinge on what is said by parties at the bar, no notice of motion can be given.

4.2 Motions submitted to Presbytery should be given to the clerk in writing. The person submitting a motion can speak to it, but if he fails to find a seconder the matter is abandoned without further discussion. Motions duly moved and seconded are open for discussion and may not be altered without leave of Presbytery. Nor may motions moved and seconded be withdrawn without leave of Presbytery. Amending or countermotions duly moved and seconded may be put against motions before Presbytery.

4.3 Though strict procedure allows a member to speak only once during discussion of a motion and this rule is rigidly observed in the General Assembly, Presbyteries tend to relax this rule in their practice but there should be an understanding as to how frequently a member may speak with regard to any motion. Presbyteries always allow a member to speak in explanation of something he has already said which he deems to have been misunderstood. The member who introduces a motion is always accorded the right of reply but he may not introduce new matter into his reply which must confine itself strictly to matters already raised. After the reply, the discussion is closed and the vote is taken.

5. **Call to Order:** In the course of a discussion, any member has a right to call another to order, and, when this is done, the person speaking should stop till the question of order is determined. Any member (whether he has already spoken or not) can take part in the discussion of the point of order. It is convenient that the point of order be referred, in the first instance, to the Moderator, who may at once announce such an opinion on it as may manifestly without any vote, command general concurrence. But, if there is much division of opinion, the point must be determined by a vote.

6. **Voting:** In Presbytery votes are usually cast by show of hands though other methods such as calling the Roll are acceptable. Motions are identified for voting purposes as first motion, second motion, etc., or motion introduced by A.B. and motion introduced by C.D.

6.1 If it is desired to take the vote between two motions by Roll, the clerk or someone assisting, calls the names and notes for which motion support is indicated. The one securing a majority becomes the decision of the Presbytery.

6.2 When there are three motions, the usual practice is to follow the rule of the

The Presbytery

General Assembly's Standing Order, and to put the two *amendments* if mutually incompatible against each other in the first instance. The one which achieves a majority is then put against the original motion. If the amendments are compatible they will in turn be put against the original motion, that is, third versus first, and then second versus first. The final decision is announced and noted by the clerk.

6.3 On the same principle, any number of motions or amendments may be disposed of by putting the last, in the first instance, against the second last, and so determining which is to be put against the next in the reverse order. The question may thus always be reduced to a vote between the original motion and that amendment or motion, whether it be second, third, or fourth, or fifth, which has been preferred through successive votes, as the one to be placed in immediate competition with the original motion.

6.4 During the taking of a vote, the doors ought to be closed, so as to avoid all confusion by members going out or coming in.

7. ***Extract Minutes:*** The usual and approved means of communicating decisions of Presbytery to those whom they concern is by extract minutes.

7.1 Parties in cases before Presbyteries are entitled to extracts from the record, containing those parts of the minutes in which they are concerned. Both parties who acquiesce in a judgment and those who appeal against it are entitled to crave extracts and take instruments in the Clerk's hands.

7.2 Members of Court are similarly entitled to ask the Presbytery for extracts which must be granted, whether they dissent and protest for leave to complain or not.

7.3 Any person who can show any reasonable ground for the request may ask the Presbytery for extracts.

7.4 The Clerk is not at liberty to give extracts to any Member of Court or to any other party without the express leave of the Presbytery.

7.5 The Presbytery cannot refuse extracts to any one who requires them, to enable him to bring his case before the Superior Court.

7.6 The Presbytery is entitled to appoint fees to be paid to the Clerk for giving extracts.

7.7 There ought to be an agreement with the Clerk, in fixing his emoluments, as to the extent to which he is expected to give extracts without fee.

7.8 It is not usual to require any fees for extracts, when they are manifestly requisite to enable those who ask for them to bring their Appeals or Complaints before the Superior Courts, or to enable those who acquiesce in decisions to have the means of showing that these decisions have been in their favour.

7.9 Fees may be reasonably required when extracts are given without any manifest necessity. But this point must be determined by each Presbytery for itself.