



GUIDANCE NOTE ON THE CHURCH COURTS ACT (ACT VI 2023)

This document has been prepared by the Legal Questions Committee as the Guidance referred to in section 26.6 and throughout the Church Courts Act (Act VI 2023) ("the CCA"). The CCA can be found here: [2023-Act-06-VI-revised-to-May-2025.pdf](https://www.churchofscotland.org.uk/documents/2023-act-06-vi-revised-to-may-2025.pdf)

This Guidance is written with Session Clerks and Presbytery Clerks in mind but will be useful for the Kirk Session as a whole, and for the wider membership and other staff of Presbyteries. The Guidance relates to (a) those sections of the CCA where Guidance is mentioned and (b) some other sections where points of practice have arisen regularly in the Office of General Assembly. This Guidance does not set out to provide an academic treatment of the CCA or to cover every question that may arise. Note also that this Guidance is not in itself Church Law. It does not replace the CCA but is intended to supplement it. If there is any inconsistency, the CCA prevails.

The Legal Questions Committee will update this Guidance from time to time. If you have any queries or suggestions for additional areas where guidance would be helpful, please email the Office of General Assembly at PCOffice@churchofscotland.org.uk.

A new book has now been published, written by Rev Dr Marjory MacLean, Convener of the Legal Questions Committee, entitled "Church of Scotland Governance: The Underlying Principles". As the title suggests, this may be helpful in describing the broad principles of how the Church of Scotland is governed including the operation of the church courts.

For more detail, users of the CCA may also find it helpful to refer to the "Practical Guide to Church Law in the Church of Scotland" written by Rev Dr Grant Barclay and which can be accessed on his blog here: [Church Law – Learning Life](https://www.churchlawlearninglife.com/). The Practical Guide offers a commentary on many of the provisions of the CCA – see especially chapter 2 (Kirk Sessions), chapter 7 (Presbyteries) and chapter 8 (General Assembly).

In relation to Kirk Sessions, as well as having the CCA to hand, Session Clerks should also be familiar with the constitution for the congregation as this will also set out practical matters relating to the operation of the Kirk Session. Most congregations are now on the Unitary Constitution although there are a number on the Model Deed (where there is a Congregational Board and Kirk Session) so this should be checked. The standard version of the Unitary Constitution can be found here:

[Unitary Constitution-Sample-updated May 2017.pdf](https://www.churchofscotland.org.uk/documents/unitary-constitution-sample-updated-may-2017.pdf)

PART 1	CHURCH COURTS
1	Broad Principle
1.1	Articles Declaratory The Articles Declaratory of the Constitution of the Church of Scotland can be accessed at: Church Constitution The Church of Scotland

PART 2		KIRK SESSION
2	Broad Principle	
2.2	<p>The Five Purposes of the Church</p> <p>These five “purposes of the church” are ecumenical principles¹ which have been incorporated into the CCA as an expression of the essential functions of every local congregation. They are not defined or described in legislation and have not officially been adopted by the General Assembly for use generally within the Church of Scotland. However, they can broadly be understood as follows:</p> <ul style="list-style-type: none"> • Worship (<i>the gathering of God’s people to offer praise and prayer, to hear the Word read and preached, and to share in the sacraments</i>); • Service (<i>responding in practical ways to our neighbour’s needs</i>); • Fellowship (<i>the developing of good relationships within the Church</i>); • Discipleship (<i>those activities which help Christians grow in their faith throughout their life</i>); • Evangelism (<i>enabling people to begin the journey of faith</i>). <p>While there is some overlap, these ecumenical principles can be distinguished from (a) the three “marks of the church” – preaching, the right administration of the sacraments and discipline – which set out the distinctive emphases of Reformed denominations including the Church of Scotland; and (b) the five “marks of mission” by reference to which Mission is defined in the CCA to describe elements of one particular function of the local congregation.</p>	
3	<p>Functions and Responsibilities</p>	
3.1 (4)	<p>Office Bearers</p> <p>While there is no precise definition of an Office Bearer, the term refers to those who hold roles in the congregation that have a degree of permanency to them and a significant sphere of spiritual responsibility and service, as opposed to those which are for a short term only or for a particular task. For example, the Session Clerk would be regarded as the holder of an office, but the person tasked with organising the flower rota would not.</p> <p>All ruling elders in a Kirk Session will be Office Bearers. Non-elders may also be Office Bearers if they hold certain positions, for example the Session Clerk, Treasurer and Safeguarding Co-ordinator even if not elders, and members of the Board where there is a Model Deed Constitution.</p> <p>The significance of being an Office Bearer is that, even if not an elder, the Office Bearer will be considered to have a sphere of spiritual responsibility just as an elder does, and they will come under the scope of the Discipline Act (Act I 2019).</p> <p>While many Office Bearers will also be charity trustees, these are not the same thing and not every Office Bearer will be a trustee. See 3.1(18) below for more information on charity trusteeship.</p>	

¹ *They are based on the purposes of a healthy church described by Rick Warren in “The Purpose Driven Church” which in turn derive from what can be observed in the early church in the book of Acts.*

	<p>The role of an Office Bearer may be shared. In particular, many Kirk Sessions appoint joint Session Clerks; there are several ways in which this can be organised, for example one may prepare the minutes with the other taking the broader role, along with the minister, of guiding the Kirk Session and congregation.</p> <p>See also the link on the Church of Scotland website to a note on Office Bearers: Office_Bearers_Congregational.pdf</p> <p>Training for Session Clerks may be found through the Learning Platform: Church of Scotland Learning The Church of Scotland</p> <p>Here is also a note on Safeguarding as a Kirk Session Agenda item: Kirk_Session_Meetings_Safeguarding_Agenda_Items.pdf</p>
3.1 (6)	<p>Kirk Session Membership</p> <p>The Kirk Session decides on the numbers of elders and a wide variation in practice can be found. Traditionally, there may have been a broad rule of thumb that there should be an elder for every 20 or so members of the congregation. However, this was when elders themselves carried out the pastoral and spiritual care of members through the district system. Nowadays, the trend is towards smaller Kirk Sessions who provide the spiritual leadership of the congregation and act as the charity trustees, and who delegate many of the day-to-day tasks in the life of the church to committees or task groups which are accountable to the Kirk Session.</p> <p>Unions and the size of Kirk Session:</p> <p>The number of unions taking place in the Church of Scotland is resulting in many large Kirk Sessions, and in some cases it may be desirable to have a smaller number of elders. However, care should be taken in achieving this aim. Here are some factors to consider:</p> <ul style="list-style-type: none"> Legally the elders on the Kirk Sessions of the uniting congregations transfer automatically to the new Kirk Session. Therefore, to reduce the size of the new Kirk Session, either some elders have to resign beforehand from the old Kirk Session(s), or after the union some elders resign from the new Kirk Session. The old Kirk Sessions cannot fetter the authority of the new united Kirk Session; therefore, if the old Kirk Sessions have a plan for reducing the size of the Kirk Session after the union, the new united Kirk Session is not bound by this and is free to make its own decision about its membership and composition. Elders cannot be forced to resign, if they are willing to hold the church and civil law responsibilities of eldership in the new Kirk Session; therefore, any mechanism for reducing the size of the Kirk Session depends on the agreement of the elders involved. If an elder resigns they retain the status of elder as they were ordained for life; they may be given the title of “elder emeritus” or another title to designate that they are ordained and have served as a ruling elder. Plus, of course, when someone is no longer a ruling elder, they can still be involved in other aspects of congregational life such as on a specific committee or task group; sometimes elders are reluctant to retire as they feel they will no longer be involved in the life of the church; however, there should not be “all or nothing” approach.

	<ul style="list-style-type: none"> It is also good practice publicly to thank all resigning elders for their years of service; this not only acknowledges the service as elder, it makes it clear to the congregation that the person is no longer a ruling elder with all the accompanying church law and charity law responsibilities that involves. If the united Kirk Session decides to reduce its numbers by having a certain number of elders resign (with their agreement of course), and for them to return at a future date (e.g. on a “rota”), there is no guarantee of future readmission by those elders; any question of readmission will be for the Kirk Session at the future date. If the new Kirk Session is reduced in size, there should still be elders on the Kirk Session from all the former Kirk Sessions in the union; it is recommended that any reduction is achieved so far as possible so that the new Kirk Session represents the proportions of membership of the former congregations. Sometimes use is made of fixed term eldership appointments and the 1932 Act now allows for fixed term eldership. However, this is only for the appointment of new elders, and for new admissions of existing elders. The provision cannot be used to put an existing ruling elder on a fixed term. <p>Here is a note which contains guidance on unions: https://www.churchofscotland.org.uk/_data/assets/pdf_file/0003/107436/Guidance-notes-on-unions-30.08.24.pdf</p>
3.1 (15)	<p>Compliance</p> <p>The CCA says that Guidance will highlight particular Acts and Regulations of which a Session Clerk should be aware. The Acts and Regulations of the Church of Scotland can be found here: Church law The Church of Scotland</p> <p>Apart from the CCA itself, Session Clerks may in particular wish to be familiar with:</p> <ul style="list-style-type: none"> <i>Safeguarding Act (Act XVI 2025)</i> – information can also be found on the Safeguarding section of Church of Scotland website: Safeguarding Service The Church of Scotland <i>Call, Election and Appointment of Ministers of Word and Sacrament Act (Act XI 2025)</i> – when a congregation is without a minister, this Act provides for the appointment of an interim moderator, and sets out the circumstances in which permission to call a new minister can be given as well as the process for calling a new minister. <i>Communion Rolls and Adherents' Rolls Act (Act IV 2025)</i>: note that the two rolls which a Kirk Session must keep are the Communion Roll and Adherents' Roll – a Supplementary Roll is no longer required. <i>Parish Ministry Act (Act II 2018)</i> – covers who can lead worship in the local congregation (sections 6-11) and who is responsible for deciding on the use of church buildings (sections 12-15). <i>Kirk Session Meetings Act (Act VI 2004)</i> – this specifies what happens in the absence of the minister and provides for specially trained elders to moderate Kirk Session meetings subject to certain conditions. <i>Sacraments Act (Act V 2000)</i> – sets out the responsibilities of the Kirk Session in relation to baptism and holy communion. <p>Always check the most up to date version of the Acts and Regulations on the Church of Scotland website as these are often updated by decisions of the General</p>

	<p>Assembly. Each year following the General Assembly, the Office of General Assembly issues a note of instructions (remit) which apply to Kirk Sessions; these will come to Session Clerks via the Presbytery.</p> <p>The Session Clerk should also be familiar with the congregation's own constitution (which in most but not all cases will be the Unitary Constitution (see link above on p1).</p> <p>For specific information and advice on church law as it applies in your local congregation, contact your Presbytery Clerk in the first instance.</p>
3.1 (17)	<p>Conflicts of interest</p> <p>The Law Dept has provided a Conflict of Interest Policy which should be adopted by the Kirk Session:</p> <p>https://www.churchofscotland.org.uk/_data/assets/pdf_file/0020/102971/Conflict-of-interest-policy-for-congregations.pdf</p> <p>Note that as well as adopting the policy, the Kirk Session should ensure that it is followed in practice. It is recommended that Conflicts of Interest is included as an early item on the agenda for each Kirk Session meeting.</p>
3.1 (18)	<p>Charity law</p> <p>The Law Department section of the Church of Scotland website has guidance on the Kirk Session as the charity trustees for the congregation:</p> <p>https://www.churchofscotland.org.uk/resources/office-bearers/governance-of-the-kirk/charity-law-being-a-trustee</p> <p>Broadly, the charity trustees will usually be the members of the Kirk Session (minister/interim moderator and ruling elders, plus any ministers or deacons who are members of the Kirk Session), along with the Session Clerk and Treasurer (if not otherwise members of the Kirk Session). In congregations with a Model Deed constitution, the members of the congregational board will also be charity trustees. Technically, it is possible for someone to be a charity trustee but not a voting member of the Kirk Session e.g. if a Session Clerk or Treasurer is appointed who is not an elder, they would be deemed to be a charity trustee but they could not be a Kirk Session member without having been ordained and admitted to the Kirk Session; however, in practice Session Clerks or Treasurers would usually be elders and therefore voting members of the Kirk Session.</p> <p>The Church of Scotland has the status of a Designated Religious Charity, or DRC, which means that it has its own system of discipline and internal controls and that it operates within the principles of its own religious framework. As a DRC, OSCR's role is restricted and OSCR does not, for example, have the power to consent to a union or dissolution or to deal with misconduct by Office Bearers. The Church of Scotland, and Presbyteries and congregations within it, have charitable status (with resulting privileges and responsibilities) but this is not apart from its primary identity of being part of the body of Christ subject to its own constitution, the Articles Declaratory, and its own Acts and Regulations.</p>
3.1 (25)	<p>Superintendence</p> <p>Note that the Local Church Review Act (formerly Act I 2011) has been repealed.</p>

	<p>A new section 2A has been inserted into the Presbytery Mission Plan Act (Act VIII 2021), providing for congregations to produce and update annually an Action Plan. The intention is that the Action Plan will be a helpful document for congregations and Kirk Sessions themselves – for example, in assisting with the preparation of a Parish Profile – and because the Action Plan has to be submitted to the Presbytery for consultation and forms part of the records to be inspected by Presbytery, it will also provide the Presbytery with key information on each of its congregations which will better allow it to oversee and support them.</p>
4	<p>Delegation of Authority</p> <p>4.1</p> <p>The broad range of functions and responsibilities belonging to a Kirk Session does not mean that the whole Kirk Session actually needs to do everything itself. Not every elder needs to be involved in every issue; indeed, given the extensive responsibilities for congregation and parish, this would often be impracticable.</p> <p>The CCA does allow for delegation, and how this is done will vary according to the size of the Kirk Session and other local factors. Under the Unitary Constitution, it is envisaged that the Kirk Session will operate with a number of committees or task groups with responsibility for different areas of church life. The committees/task groups should have clear remits and at least one elder should be a member of each one. Other members of the committees/task groups can be from the wider church membership or the parish.</p> <p>With this structure, the work of the congregation can be done by those with particular giftings in an area, who do not need to be elders. This frees the Kirk Session for oversight and spiritual leadership, and as it does not need to be involved in the detail of every matter it may be that less frequent meetings of the Kirk Session are required.</p> <p>At the very least, it is good practice to have a small committee to make decisions quickly as needed on urgent matters that may arise between Kirk Session meetings (e.g. on repairing storm damage to the church building) – this could, for example, be the Minister, Session Clerk, Treasurer, Property Convener and perhaps one other elder.</p> <p>It is good practice for each committee or task group under the Kirk Session to have a written remit approved by the Kirk Session, which reflects the priorities for the congregation from the Action Plan. The Kirk Session should also agree in advance which matters from the remit are delegated to a committee or task group for it to decide and which decisions must be brought back to the Kirk Session; as well as how and when the committee or task group needs to report to the Kirk Session. There should also be clear information agreed in advance by the Kirk Session about where budgetary authority lies for the various remits.</p> <p>In accordance with section 4 of the CCA, it should also be made clear whether decisions under delegated powers are final or whether there are circumstances in which they can be recalled or rescinded by the Kirk Session. Care needs to be taken with ongoing contracts, such as employment contracts; although the Kirk Session can rescind or withdraw delegated authority going forward, it may not be able to break contractual obligations properly entered into under delegated powers.</p>

	<p>It is good practice for the Kirk Session to review its remits and delegated authority at least annually. Is the right balance being achieved between the Kirk Session's overall responsibility and the benefits of delegation to others?</p>
5	Meetings
5.0	<p>Kirk Session meetings are open and individuals who are not members are welcome to attend. In accordance with this principle of transparency, Kirk Session meetings should be intimated to the congregation so that the congregation knows a meeting is taking place.</p> <p>However, where the Kirk Session is considering matters which are personal or disciplinary or which are of a pastoral or commercially sensitive nature, that part of the meeting or even the whole meeting should be held in private. It is the Kirk Session itself which decides what is to be held in private, but the default should be towards openness where possible. Examples of matters to be taken in private could be where names for possible eldership are being discussed, where the Kirk Session is deciding how to deal with a complaint against a member, where there is consideration about how to offer pastoral care in a specific instance, or where there is a proposal to buy or sell a building which would benefit from private discussion before the proposal is known by the community.</p>
5.2.2	<p>Minutes</p> <p>The training for Session Clerks on the Learning Platform (see link above) includes guidance on Kirk Session minutes, as well as a style minute.</p> <p>As Kirk Session meetings are generally held in public, the minutes should also be made available to the congregation; either they could be displayed on a notice board or church website (not including any record apart for private business). Sometimes individuals beyond the congregation may ask to see minutes; while the Kirk Session will seek to be helpful and make minutes available for inspection, or send copies out to the individual, in practice there must be a degree of reasonableness about the time and costs incurred in providing these.</p>
5.2.4	<p>Kirk Session meetings may take place in person, or online, or in hybrid format. Where people are attending online, care needs to be taken to ensure that voting can be conducted in a way that is fair and clear, especially where more than one person may be accessing the meeting through the same computer. Although it may be unusual in a Kirk Session, where there is need for a private ballot it may be necessary to set up an electronic voting system so this would have to be considered in advance.</p>
5.2.6	<p>Standing Orders</p> <p>The Kirk Session may have its own set of Standing Orders to govern its business; however, this is not essential (and in fact would be unusual) and instead the Kirk Session will follow the Standing Orders of the General Assembly. See the link here to the current Standing Orders of the General Assembly:</p> <p>https://www.churchofscotland.org.uk/_data/assets/pdf_file/0007/134395/Updated-new-Standing-Orders-20.5.25.pdf</p>

5.3.1	<p>Moderator of Kirk Session</p> <p>The minister of the charge will be the Moderator of the Kirk Session. Where there is a Team Ministry, the Basis of Team Ministry will specify which Team Ministry Role provides the Moderator. In the absence of a minister, the Presbytery will appoint an Interim Moderator.</p> <p>In certain circumstances, an elder can moderate a meeting of the Kirk Session provided they have had the required training provided on behalf of the Legal Questions Committee. The details can be found here in the Kirk Session Meetings Act (Act VI 2004):</p> <p>https://www.churchofscotland.org.uk/_data/assets/pdf_file/0012/7140/2004_Act_6_VI_revised_2011.pdf</p>
5.4.2	<p>Assessor Elders</p> <p>Assessor Elders are appointed by Presbytery from outside of the Kirk Session, where there are not enough elders or the Kirk Session is having difficulty in operating. If the Presbytery appoints Assessor Elders, it will specify whether or not these Assessor Elders have a vote. Assessor Elders appointed with voting rights become charity trustees for the time when they are acting as Assessor Elders.</p>
6	<p>Membership of the Kirk Session</p>
6	<p>See Appendix for a table of when various categories of people are members of a Kirk Session.</p>
6.5	<p>While there is a minimum age of 18 for those appointed to the eldership (section 6.7), there is no minimum age for correspondents. Appointing younger members of the congregation as correspondents can be a way of introducing younger people to the role of a Kirk Session.</p>
6.10	<p>In removing any elder from membership of the Kirk Session under this section, Kirk Sessions are urged to act pastorally.</p>
PART 3	<p>PRESBYTERY</p>
10	<p>Functions and Responsibilities</p>
10.1 (8)	<p>Guidance has been issued on the Presbytery Complaints Process. If it is relevant to you, this can be obtained from your Presbytery Clerk.</p>
10.1 (14)	<p>The Presbytery Review Act (Act I 2025) has now been enacted:2025-Act-01-Presbytery-Review.pdf</p> <p>The Legal Questions Committee intends to issue Guidance on the Act in due course once the first year or so of reviews have been conducted.</p>
10.1 (26)	<p>Presbyteries are now required to have charitable status, as do individual congregations and the Church of Scotland as the Unincorporated Entities. As mentioned above, as a DRC the Church of Scotland has its own system of discipline and internal controls and operates within the principles of its own religious framework. The primary identity of the Church, and its various parts at Presbytery and local level, is as part of the larger body of Christ subject to its own constitution, the Articles Declaratory, and its own Acts and Regulations.</p>

11	Delegation of Authority
11.1	<p>Given the size and sphere of responsibility of the new larger Presbyteries, it is particularly important for Presbyteries to have in place an appropriate scheme of delegation.</p> <p>The comments above in relation to Kirk Session delegation apply also to Presbyteries.</p>
12	Meetings
12.2.6	<p>The situations in which those who are not members (or corresponding members) of Presbytery may come to speak to the Presbytery will vary, but may include:</p> <ul style="list-style-type: none"> • Guest speakers invited to address Presbytery on a topic of interest; • Members of congregations cited to attend Presbytery on a matter affecting them; • Individuals who wish to petition the Presbytery; these may be members of a congregation within the Presbytery or from elsewhere if they have a legitimate interest to seek a decision from Presbytery.

Office of General Assembly

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APPENDIX - MEMBERSHIP OF KIRK SESSION:

Category	Membership of KS	Source
Parish Minister	Yes	s6.1 CCA
Team Minister	Yes – all Team Ministers	s6.2 CCA
Associate Minister	Yes if introduced to the charge (s32(4) of new Vacancy Act (Act XI 2025))	s6.1 CCA
Interim or Transition Ministers	Yes	s2 PMA 2018
Interim Moderator - MWS	Yes	s24.6 CCA/s3(1) PMA
Interim Moderator - Elder	Yes	s18 KS Meetings Act
Assistant Minister	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	s6.2 CCA
Ordained Local Minister	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
Auxiliary Minister	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
Retired Minister (Category O/R or I on the Register of Ministry)	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
Employed Minister (e.g. chaplain/employed in church offices)	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
MDS who is a minister	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
Locum Minister	No – but may be invited by KS to attend and speak	S6.6 CCA
Candidates and Probationers	No – but may be appointed as Corresponding Members or otherwise invited to meetings	
Parish Deacon	Yes if introduced (under s32(4) of the new Vacancy Act (Act XI 2025))	s6.1 CCA
Other Deacon	No – may be invited by KS to be associated with the KS (can attend and speak but not vote)	
Ruling Elder	Yes	s6.1 CCA
Elder not a ruling elder	No	
Assessor Elder	Depends if have voting rights	s5.4.2 CCA
Session Clerk (if not a ruling elder)	Not a member of the KS, but they are a charity trustee and as an Office Bearer subject to the Discipline Act	s3.1 (4) CCA
Treasurer (if not a ruling elder)	Not a member of the KS, but they are a charity trustee and as an Office Bearer subject to the Discipline Act	s6.3 CCA
Corresponding member	No – can receive papers, attend and speak (except private business) but not vote	S6.5 CCA