

Paper P1

Local United Reformed Church Constitutions

Law and Polity Advisory Group

Basic information

Contact name and email address	Neil Mackenzie ravelston20@hotmail.co.uk On behalf of Law and Polity Advisory Group
Action required	Note.
Draft resolution(s)	None.

Summary of content

Subject and aim(s)	Starting with local churches, we aim for drafts for each Church Council (except District Councils and Area Councils) which those concerned can follow and distinguish between the Church functions and the charitable application of funds.
Main points	Please see narrative below.
Previous relevant documents	The model constitution for local churches.
Consultation has taken place with...	Consultation will take place immediately following Assembly with Moderators and PLATO concerning the amended model. There will be consultation with the Synod for Scotland concerning a model drafted for local churches in Scotland following discussions with the Office of the Scottish Charity Regulator (OSCR).

Summary of impact

Financial	We intend to take counsel's advice on the impact of forming S/CIOs on the personal liability of church officers.
External (eg ecumenical)	None.

Local churches in the Synod of Scotland have been registered with the Office of the Scottish Charity Regulator (OSCR) in their totality, which is inconsistent with charity registration in England and Wales where the Charity Commission recognises that the URC as an institution is not a charity, and neither are its local churches. However, a recent registration which OSCR has accepted is of the funds of a local church in Scotland, which is consistent with registration in England and Wales. OSCR, in this case, has treated the church institution as not being a charity, and the charitable funds as distinct.

This has prompted the Law and Polity Advisory Group (LPAG) to review the constitutional documents for local churches which have been adopted by General Assembly (GA) and agreed with the Charity Commission. There was an urgency, but concerns were expressed about the revised draft, and further work by LPAG has been carried out in consultation with those who had expressed concern.

However, on further consideration, LPAG believes that the existing constitutional documents should be amended to clarify and distinguish better the church arrangements from the charitable funds administered and managed by, and in connection with, the local church.

A further driver for a revised draft local church constitution is the call of GA for a review of the governance of the United Reformed Church (URC) and its relationship with the United Reformed Church Trust (URCT) in the carrying out of the work of the URC. For example, the URCT is regarded by the Charity Commission as the charity trustee of the GA funds.

The result of these developments is that the production of a model local church constitution is taking longer than anticipated. Our hope is that any local church in Scotland which has not registered with OSCR will register with the agreed model, and those churches already registered will adopt the agreed model in place of any existing constitution, making it clear that what is registered is the funds.¹ Our intention is to have discussions with OSCR as soon as possible.

The model defines the charitable funds and the charity trustees, namely the eligible² elders who serve for the time being, acting in accordance with their usual procedure. The model distinguishes between the church, which is not a charity and is not subject to the jurisdiction of the Commission or OSCR, and its charitable funds, which are subject to such jurisdiction. The model is ready to put to the Charity Commission in England and Wales, and to National Synod of Scotland officers and to OSCR for approval.

In the same way, there could be separation between GA and its funds, and Synods and their funds. We aim for drafts for each Church Council (except District Councils and Area Councils), which those concerned can follow and distinguish between the Church functions and the charitable application of funds.

LPAG is aware that there is a strong wish in England and Wales to form Charitable Incorporated Organisations (CIOs) and, in Scotland, Scottish CIOs (SCIOs) (together referred to as S/CIOs). This is seen as a way of limiting the personal liability of officers. With regard to S/CIOs, we have moved forward from a position that no Council of the URC could exist as a S/CIO³ to the possibility that the funds and property belonging to a Church Council can be incorporated as a S/CIO. Our legal advice so far confirms that forming a S/CIO in this way will protect members of the Church Council concerned from personal liability.

If our model constitution for local churches (and similar models for the other Church Councils) can be agreed by the Commission and OSCR, it should be straightforward to

¹ This would include any land and buildings held for the general purposes of the church but not the church buildings. Church buildings are held on the trusts set out in the URC Acts

² Those elders who have not been disqualified from acting as a charity trustee.

³ Which is still the case because neither the URC nor any of its Councils is charitable in law.

move on to identify and constitute S/CIOs because the charity funds and trustees have been identified⁴ and the purposes are repeated in the same terms.

⁴ At present, the charity trustees of funds of GA and in England and Wales of Synods are their respective associated Trust Companies, so far as the Commission is concerned – we believe the only exceptions to this are Thames North and Mersey.