

CHURCH – CHARITY TRUSTEES

Who are the Charity Trustees?

In the Church of Scotland, each congregation is a charity and the charity trustees are the members of the Kirk Session, together with the members of any separate Financial Board (e.g. the Congregational Board, Deacons' Court or Board of Managers). Elders who are not on the Session, having resigned perhaps due to age or other commitments, are not charity trustees.

The 'Charity and Trustee Investment Act 2005' (the Act) and the common law impose the duties on charities and charity trustees. The Act also sets up the 'Office of the Scottish Charity Regulator' (OSCR) as the body responsible for overseeing Scottish Charities.

The Act defines the charity trustees as 'the persons having the general control and management of the administration of a charity.'

What is expected of Charity Trustees?

The Act sets out a number of general duties that the charity trustees must fulfil. They must:

- act in the interests of the charity, putting its interests above their own interests or those of any other person or organisation
- operate in a manner consistent with the charity's purposes. Trustees should carry out their duties in accordance with their governing document
- act with due care and diligence
- ensure that the charity complies with the provisions of the Act and other relevant legislation

The Act also has a number of specific duties, namely that charity trustees must:

- update the charity's details to keep the Charity Register up to date
- comply with the statutory duty to supply information via the Annual Return and the Trustees' Report and Annual Accounts and about certain changes, e.g. change of constitution, contact details
- keep specified accounting records and have them independently examined
- if using a professional fundraiser, comply with relevant regulations about this
- provide certain information to the public

The last duty includes giving out copies of accounts, if asked for these, and putting the charity's legal name and number on the congregation's websites, notepaper and other literature. HMRC also require charity trustees to meet the 'fit and proper person'.

Rules and a collective responsibility

The word 'compliance' in the legal field refers to the situation where an individual or a group obeys a set of rules or regulations determined by the law or any governing body. Nowadays, congregations are subject to what seem to be - and indeed are - ever increasing numbers of regulatory rules, due to the wider range of activities and projects congregations are getting involved in.

As charity trustees, office bearers have to be aware of the rules and work together to put in place appropriate policies and procedures in order to avoid or at least minimise the chance of the congregation finding itself on the wrong end of the law; they have a collective responsibility to make sure this is done.

Getting it right

The list of things that office bearers have to be aware of and comply with will vary from congregation to congregation, depending on the range of activities making up the life of the congregation. The list will always include the legal rules connected with charity law,

data protection, health and safety, safeguarding and food safety. These rules are complex, with the real risk of some form of penalty for breach. They have been put in place by Parliament for a reason, namely to protect the public in some way against physical or financial harm.

It is important to remember that, as office bearers, they are not expected to have a detailed knowledge of the legislation. They simply need to have an awareness of it and to ensure, via monitoring and checks, that at least one of the fellow office bearers is taking responsibility for compliance in each area relevant to the congregation.

Other legal obligations

As office bearers, they need to be satisfied that the congregation is also meeting its contractual and financial responsibilities. This might include the conditions contained in leases relating to property, which the congregation is letting out, or has taken on lease, or conditions attaching to a gift or legacy. They need to comply with the terms of other contracts (e.g. for photocopiers, leased vehicles, etc.). On the financial side, as well as getting accounts and reports in proper form lodged with the charity regulator, gift aid claims need to be correctly administered. If the congregation employs staff, PAYE and National Insurance, auto enrolment for pensions and contracts of employment will all be important areas to get right.