

# TRUSTEES OF THE CHURCH OF SCOTLAND HOUSING AND LOAN FUND FOR RETIRED MINISTERS AND WIDOWS AND WIDOWERS OF MINISTERS

May 2016

## PROPOSED DELIVERANCE

### The General Assembly:

1. Receive the Report and thank the Trustees and Staff.
2. Appoint Mr H D W Findlay as a Trustee of the Fund.

## REPORT

### 1. Aim of the Fund

1.1 The Fund exists to support retired Church of Scotland ministers, and widows, widowers, separated or divorced spouses and separated or former Civil Partners of Church of Scotland ministers, in need of help with housing. The Trustees endeavour to provide assistance by way of either a house to rent or a house purchase loan in accordance with guidelines set, and regularly reviewed by the Trustees. Guidance Notes incorporating these guidelines are available on the Church of Scotland website or can be requested from the Secretary at the Church offices. The Secretary is always happy to meet with potential applicants to discuss their particular situation, and the assistance which the Trustees may be able to provide to them.

1.2 The Trustees own, and regularly acquire, houses for leasing at concessionary rents to those with insufficient resources to enable them to purchase houses for themselves. Alternatively, loans at favourable rates of interest are granted up to 70 per cent of a house purchase price, subject to an overriding normal maximum of £25,000 for Standard Loans, and £119,000 for Shared Appreciation Loans.

### 2. Housing Transactions: 2015

2.1 Assistance provided during 2015 to ministers, widows and widowers, and separated and divorced spouses, is detailed in Appendix 1 annexed to this Report. The percentage of those eligible to apply, and who were granted assistance, is similarly shown in Appendix 1. All those who applied and who fell within the financial parameters of the Fund were provided with assistance.

2.2 The Trustees owned 250 houses at the end of 2015. The houses purchased and those sold by the Trustees during that year, are detailed in Appendix 2, which also shows the average price of the houses so purchased, and the average price of the houses disposed of. At the end of 2015, nine houses were still being marketed for sale.

### 3. Rents and Rental Reviews

3.1 Rents charged for housing provided by the Fund are set, at the beginning of the tenancy at 50% of the Market Rent (as professionally assessed at that time), for Ministers, and at 25% for widows and widowers of Ministers. The exception to this are leases granted prior to 1989 where rents continue at rates of 70% of Fair Rents for Ministers and 35% for widows and widowers of Ministers.

3.2 The Trustees considered carefully the level of annual rent increase, in the light of an inflation figure of 1.6% (as at 31 December 2014). The Trustees were however mindful that the Pension Trustees had not been able to apply a discretionary increase to those with pensions earned up to 1997. Many of the Fund's tenants are in this category of pensioner. The Trustees therefore decided that rents should not be increased in 2015.

#### 4. Loan Transactions: 2015

4.1 The Fund provides loans by way of Standard Loans, Shared Appreciation Loans, and Short Term Bridging Loans.

4.2 Standard Loans are granted up to a normal maximum limit of £25,000 at a rate of interest of four per cent for ministers and two per cent for surviving widows or widowers of ministers.

4.3 Shared Appreciation Loans, which link loan repayment values over their term to the value of the property concerned over the same period, may be granted up to a normal maximum limit of now, £119,000, following the revision of parameters (see 7.2 below). Currently rates of interest for such loans are two and a half per cent for ministers and one and a quarter per cent for widows or widowers of ministers.

4.4 Short Term Bridging Loans are granted for a specific period, and in specific circumstances, at the discretion of the Trustees. Interest is charged at a rate equivalent to that permitted by HM Revenue & Customs without liability for benefit-in-kind taxation. At the time of writing this was three per cent.

4.5 Details of each of the three types of loan outstanding as at 31 December 2015 are given in Appendix 3.

#### 5. Donations, Bequests etc.

5.1 The Trustees are gratified to report that during 2015 they received a total sum of £18,947 by way of donations, bequests and gifts.

#### 6. Funds

6.1 The expenditure on house purchases, less house sales during 2015 was £171,312. The net increase in long-term loans during 2015 was £54,550.

6.2 Investments at market value, and cash deposits, at 31 December 2015 amounted to £7,149,207.

#### 7. The Future

7.1 Those Ministers who are within five years of retirement are encouraged to contact the Fund if they feel they may need to avail themselves of the Fund's assistance. Similarly the Trustees always welcome an initial approach from those who are within five to ten years of retirement. Such approaches not only assist the Trustees with financial forecasting, but can help to alleviate some of the anxieties which ministers and their spouses may experience in respect of housing as they contemplate their future after retirement. Details of commitments for the provision of either a house to rent, or a loan, during the next five years, and approved at 31 December 2015, which will require to be met from funds, can be found at Appendix 4. The number of ministers due to retire within a five to ten year period from 31 December 2015 and whose names have been placed on the Preliminary Applications List for assistance can also be found at Appendix 4.

7.2 In December 2015 the Trustees considered carefully the parameters for granting assistance with housing to rent, and assistance by way of housing loans, taking into account the current state of the housing market, the numbers of ministers due to retire, and equally the Fund's obligations towards the Church and the proper and appropriate stewardship of its resources. As a result, it was agreed that the house purchase price limits for 2016 be increased by £5,000 so that the **maximum** price for a house to rent will be £170,000 and the **maximum** price, or value, of a house in respect of which a loan would be given, will similarly be £170,000. The Trustees are satisfied that such parameters will enable appropriate housing to be purchased for rental, or with the aid of Fund loans, in the current housing market for those who are eligible for

assistance from the Fund. Applicants for whom assistance is to be granted by way of a house to rent are reminded that the figure of £170,000 is a **limit, and not a target**, and separately they are requested to consider, first, the Fund's vacant properties before the Trustees will be prepared to purchase a house for them.

## 8. Diligence

8.1 The Trustees confirm that the Staff have routinely and progressively monitored their stock of rental housing, and housing over which loans have been secured, and have continued to support all of their tenants and borrowers. No significant problems have been identified or encountered.

8.2 Continuing and increasing amounts of legislation relating to privately rented property have had an impact on the work of the Fund, and particularly on those members of staff with responsibility for ensuring that all legislative obligations are met. Requirements such as those for hard-wired carbon monoxide alarms, from 1 December 2015, and also for Legionella Risk Assessments on all the Fund's properties have increased both workload and costs.

8.3 The number of empty properties currently held by the Fund continues to present challenges, as the Fund follows good practice by ensuring that they are all checked regularly, and heated during cold weather, a practice underlined by the Insurers' requirement for such precautions. Garden upkeep and payment of council tax add significantly to the costs of maintenance for such properties. Strenuous efforts are made to try and relet such properties, but for a variety of reasons, this is often not practicable.

8.4 The Fund intends to embark on a programme of central heating boiler replacement during 2016, for those properties which would benefit from having a newer and much more efficient system, thereby reducing, it is hoped, heating costs for the tenants concerned.

## 9. Motion to 2015 General Assembly

9.1 The Trustees were invited at the General Assembly of 2015 to give serious consideration to the present practice of halving housing loan interest payments and rents charged to widows and widowers of ministers whilst charging single, divorced and separated ministers the same amount of interest or rent as charged to married Ministers or Ministers in Civil Partnerships, and report to the General Assembly of 2016.

9.2 As noted above at 3.1, rent, for all Ministers, is charged at 50% of the relevant open market rent for the property.

9.3 It is the case that Ministers, irrespective of marital status or civil partnership status, receive a "full" pension in respect of their service with the Church of Scotland, unless it is abated for any other, unconnected, reason. A widow, widower or bereaved civil partner receives one half of their spouse's Church of Scotland pension. Therefore, for many years, the Fund, which looks to a Minister's Church of Scotland pension as a significant element of their income in retirement, has agreed that such widows, widowers and bereaved civil partners pay accordingly, one half of the rent or loan interest.

9.4 The Trustees had previously become aware of a perception that married Ministers enjoy *per se* a significantly enhanced level of joint income with their spouse and accordingly the Fund carried out an internal audit, two years ago, of the incomes contained in all applications to the Fund over a five year period, and of all Ministers who received benefit from the Fund in the same five year period. The detail of this analysis is of course confidential, but it can be disclosed that of the 141 Ministers who applied to or benefited from the Fund in that period, seven individuals had spouses who, at the time, had what might be perceived to be significant income. However even in these few cases, exceptional and unusual circumstances pertained.

**9.5** Therefore it is the firm and unanimous view of the Trustees that the perception that married Ministers who benefit from the Fund enjoy *per se* a significantly enhanced level of income from which to pay rent or loan interest by reason of their spouse's income is unfounded in fact.

**9.6** It is also the firm and unanimous view of the Trustees that no disadvantage presently is suffered by single, divorced, or separated Ministers as a result of the Fund's current administrative procedures. Should, however, any well-founded evidence of such disadvantage be revealed, then the Trustees would respond to that, on a case by case basis.

## **10. Constitution**

**10.1** Over some time, prompted by a need to examine all aspects of the Trust Purposes of the Fund, and the duties and responsibilities of the Trustees, in the light, firstly, of the Procurator's re-affirmation of the independence of the Fund, as constituted by the General Assembly of 1969, secondly of the legal requirements imposed by the Charities and Trustee Investment (Scotland) Act 2005, and enforced by OSCR, and thirdly, the introduction of the new Church of Scotland Pension Plan, the Trustees have been revisiting the Constitution of the Fund.

**10.2** The Fund, or Trust, was constituted in 1969, in terms of the Report to the General Assembly of 1965 of the Aged and Infirm Ministers' Fund and Pension Fund. An updated version of the Constitution has been prepared, vetted (by *inter alia* a Charity Law Specialist Solicitor and the Solicitor of the Church) and approved by the Trustees. It has still, at its core, all of the original Trust Purposes, but also now includes all of the procedural and legalistic detail which current charity law requires.

**10.3** An important amendment relates to role of the voting members of the Church's Council of Assembly, who, under and in terms of the Charities and Trustee Investment (Scotland) Act, 2005, having become the Charity Trustees

of the Church of Scotland Unincorporated Councils and Committees (Scottish Charity No SC011353), (designated a "designated religious charity" under Section 65 of the said Act, of which the Fund is a component element), are therefore the Charity Trustees of the Fund under the said Act, and accordingly are entitled to act in a supervisory and disciplinary role in a delegated capacity on behalf of the General Assembly. It is therefore necessary to reflect these changes in the Constitution of the Housing and Loan Fund, whilst making it clear that decisions as to the general strategy, policy, management, administration, investment and the application and disbursement of the trust funds are taken exclusively by the Trustees of the Fund appointed in terms of the Constitution. The trust funds remain vested in the Fund's Trustees.

**10.4** A further important amendment is in respect of the criteria relating to applications to the Housing and Loan Fund. The Fund's original Constitution referred to the eligibility of Ministers of the Church of Scotland to apply to the Housing and Loan Fund, in terms of their entitlement to receive an annuity from the Church of Scotland Pension Scheme for Ministers and Overseas Missionaries. As the above Pension Scheme closed on 31 December 2013, and a new scheme, the Church of Scotland Pension Plan, administered by Legal and General Group plc, came into operation on 1 January 2014, it has been necessary to make consequent revisions to the Constitution of the Housing and Loan Fund, to ensure the eligibility of Ministers to apply to the Fund remains unchanged.

**10.5** The updated Constitution also incorporates a few further powers approved over the years by the General Assembly, and procedures and duties required for good governance.

**10.6** A copy of the Fund's original Constitution dating from 27 May 1969, and a copy of the updated Constitution are attached at Appendix 5 (a) and (b) respectively.

**10.7** The Council of Assembly, on the recommendation of its Governance Group, has as Charity Trustees, approved the updated Constitution and submitted it, along with an

application for a restricted funds reorganisation, to OSCR early in October 2015, for final approval.

## 11. Staff

11.1 The Trustees wish to place on record their indebtedness to the work of the staff of the Fund, and in particular the care and support afforded by staff to all those who apply to, or have been assisted by, the Fund.

## 12. Membership

12.1 Two Trustees are retiring at this year's General Assembly.

12.2 Rev Catherine Collins, who was appointed by the Ministries Council, has served as a Trustee since 2004, and has brought to the Fund a quiet and rational perspective combined with compassion, which has been immensely valuable when discussing some of the more challenging issues which have faced the Trustees from time to time. We wish her well as she continues her busy Ministry in Broughty Ferry.

12.3 Grahame Lees, who retires as both a Trustee and as Chairman, became a Trustee in 2003, and took over as Chairman in 2008. His experience as a Solicitor has been enormously helpful to the Trustees when dealing with some of the more complex legal matters that have arisen during his period of service. As Chairman, he has always been superbly prepared, and he has steered the Trustees' meetings with calm good humour. He has shown unfailing kindness to the other Trustees and to the staff and we will greatly miss his genial presence.

*In the name of the Trustees*

J G GRAHAME LEES, *Chairman*  
IAN TAYLOR, *Deputy Chairman*  
LIN J MACMILLAN, *Secretary*

## ADDENDUM

Grahame Lees has been involved with the life of the Church over five decades. In the late 1970s he was a member of the Practice and Procedure Committee, and then went on to become Vice-Convener of Legal Questions. From 1988 to 1992 he was Convener of the Personnel Committee.

In 2003 he was appointed a Trustee of the Housing and Loan Fund, becoming only the third Chairman in its 47 year history in 2008.

During all of this time he has served as an Elder in Dunblane Cathedral fulfilling many roles over the years, including Session Clerk.

Somewhere he also found time to be a highly regarded Solicitor in Dunblane.

As a 'son of the Manse' Grahame's service to the Church has undoubtedly been shaped by his experience of 'Manse' life. To the Fund he has then brought a deep concern for people, combined with cheerfulness, and humour. Above all his humility has provided the Housing and Loan Fund in particular, and the Church of Scotland more widely, with a highly esteemed and gracious individual, whose impact and influence will be very hard to replace.

IAN TAYLOR, *Deputy Chairman*  
LIN J MACMILLAN, *Secretary*

## APPENDIX 1

<b>Assistance provided</b>	<b>2015</b>	<b>2014</b>
Number of Ministers retiring (and eligible to apply to the Fund)	39	24
Percentage assisted with a house to rent	10%	4%
Percentage assisted with a house purchase loan	21%	17%
Total percentage assisted	31%	21%
Percentage of individuals eligible to apply who fell within the Fund's financial parameters and who received assistance	100%	100%
Instances of assistance provided*		
Retiring Ministers	11	4
Ministers already retired	5	2
Widow(er)s & Civil Partners	1	0
Spouses	2	3
Total	19	9

\* Assistance may be provided in a different calendar year to that in which the Minister actually retires

<i>Tenants as at 31 December</i>	<b>2015</b>	<b>2014</b>
Ministers	152	156
Widow(er)s & Civil Partners*	69	69
Spouses	12	11
Commercial rental	3	4
Vacant	16	9
<i>Borrowers as at 31 December</i>	<b>2015</b>	<b>2014</b>
Ministers **	86	83
Widow(er)s & Civil Partners	47	48
Spouses	0	0

\* Two houses owned by the Buchanan Trust are tenanted by widows and managed by the Housing and Loan Fund

\*\* 4 Ministers have dual loans

## APPENDIX 2

<b>Rental Housing</b>			
	<b>2015</b>		<b>2014</b>
Total number of houses owned at 1 January	249		257
Houses purchased during year	12		5
Total cost of purchases		£1,594,923	£678,373
Average house price		£132,910	£135,675
Houses sold during year	10		13
Total amount realised		£1,423,611	£1,878,758
Average proceeds		£142,361	£144,520
Houses bequeathed/gifted during year	0		0
House relinquished during the year	1		0
Houses relet during year	1		1
Total number of houses owned at 31 December	250		249
Average market rent of property purchased during year	£7,490		£7,448
Average rent of new tenancies - Ministers/Spouses	£3,840		£3,724
Average rent of new tenancies - Widow(er)s	£1,350		0

## APPENDIX 3

<b>Housing Loans</b>			
	<b>2015</b>		<b>2014</b>
<i>Long term loans outstanding at 1 January</i>	135		134
Value of loans outstanding		£6,415,200	£6,189,700
New loans granted during year	4		5
Additional loans granted during year	1		0
Value of loans granted		£212,000	£275,500
Loans fully repaid during year	6		4
Loans partially repaid during year	1		0
Value of loans repaid		£157,450	£50,000
Long term loans outstanding at 31 December	133		135
Value of long term loans outstanding		£6,469,750	£6,415,200
<i>Short term Bridging Loans outstanding at 1 January</i>	2		3
Value of Bridging Loans outstanding		£148,000	£155,000
Bridging loans granted during year	1		2
Value of Bridging Loans granted		£50,000	£148,000
Bridging loans repaid during year	3		3
Value of Bridging Loans repaid		£198,000	£155,000
Short term Bridging Loans outstanding at 31 December	0		2
Value of Bridging Loans outstanding at 31 December		£0	£148,000

**APPENDIX 4**

<b>Outstanding Commitments at year end</b>		
	<b>2015</b>	<b>2014</b>
For next 5 years		
Houses to rent	27	29
Housing Loans	11	10
Value of outstanding commitments	£5,285,000	£5,056,000
<b>Preliminary Applications</b>		
	<b>2015</b>	<b>2014</b>
For those retiring between 5 - 10 years	6	2

## APPENDIX 5

(a) Constitution of the Housing and Loan Fund, dated 27 May, 1969

### CONSTITUTION AND REGULATIONS OF THE CHURCH OF SCOTLAND HOUSING AND LOAN FUND FOR RETIRED MINISTERS AND WIDOWS OF MINISTERS.

#### 1. Name and Object

The Church of Scotland Housing and Loan Fund for Retired Ministers and Widows of Ministers (hereinafter referred to wherever the expression "the Fund" is used) is established by the General Assembly to facilitate the provision of housing accommodation for aged or infirm Ministers and Widows of Ministers.

#### 2. The Funds

The Capital of the Fund shall consist initially of a sum of £25,000 provided by the Committee on the Maintenance of the Ministry, together with a sum of £76,211 provided by the Committee on the Aged and Infirm Ministers' Fund and Pension Fund and a sum of £25,000 provided by "The Baird Trust" acting under The Baird Trust Orders of 1939 and 1957, as confirmed by The Baird Trust Order Confirmation Acts, 1939 and 1957. Such initial provisions, together with all receipts by the Fund in respect of donations, legacies, interests, and all loans or other assets of whatever description are hereinafter referred to as "the funds."

#### 3. Management and Administration

The management and administration of the funds shall be under the control of the Trustees of the Fund (hereinafter referred to wherever the expression "the Trustees" is used). The whole funds shall be vested in the Trustees. The Trustees shall be ten in number, being-

- (1) The Convener and Vice-Convener *ex officii* of the Committee on the Maintenance of the Ministry; with one further person nominated and appointed by that Committee;
- (2) The Convener and Vice-Convener *ex officii* of the Committee on the Aged and Infirm

Ministers' Fund and Pension Fund; with one further person nominated and appointed by that Committee.

- (3) The Chairman *ex officio* of The Baird Trust, with one further person nominated and appointed by The Baird Trust; and
- (4) The Secretary of the Church and Ministry Department and the Secretary of The Baird Trust, both *ex officii*.

The following Rules shall apply to the conduct of the Trust hereby constituted:

- (a) Regular meetings of the Trustees shall be held at such places as may be appointed by the Trustees, and such meetings shall be called by a notice sent by the Secretary or Chairman appointed as after-mentioned stating generally the purposes of the meeting and addressed to each of the Trustees and posted at least five clear days before the date of the meeting, provided however that in exceptional circumstances it shall be competent with the consent of a quorum of the Trustees as after-mentioned to call a meeting of the Trustees on shorter notice.
- (b) The Trustees shall appoint one of their number to be Chairman at meetings of the Trustees, and the Chairman appointed shall serve as such until the meeting following the third anniversary of his appointment when he may be reappointed or a new Chairman appointed as may be decided by the Trustees. In the event of the Chairman being absent from a meeting of the Trustees then the Trustees present at such meeting shall appoint one of their number to act as Chairman at that meeting.
- (c) On a vote a resolution carried by a majority of the Trustees present at a meeting of the Trustees shall be the finding of the meeting and in the case of equality the Chairman at the meeting shall have a casting vote in addition to a deliberate vote.

- (d) The Minutes of Meeting of the Trustees shall be submitted for approval at the following meeting of the Trustees and, if approved, shall be signed by the Chairman who presides at that following meeting and the Secretary and shall thereafter be recorded as duly authenticated as evidence of the views therein stated.
- (e) Five Trustees shall be a quorum at meetings.

#### 4. Officials

The General Treasurer of the Church and the Secretary of the Church and Ministry Department shall be the Treasurer and the Secretary respectively of the Fund. The Trustees may further appoint such other officials as from time to time they may consider necessary for the proper administration of the Fund and may define the duties of all officials.

#### 5. Legacies and Donations

Legacies and donations to the Fund shall be validly discharged by the Treasurer.

#### 6. Expenses

The expenses of management of the Fund each year shall be due and payable from the funds.

#### 7. Accounts

The Accounts of the Fund shall be made up each year as at 31 December, submitted to the Auditor of the Church and reported to the succeeding General Assembly.

#### 8. Management of Funds

The Trustees shall utilise the funds or such part thereof as may be required:

- (1) in the making at their discretion of loans to Ministers and the Widows of Ministers for the purpose of assisting such Ministers or Widows in the purchase of housing accommodation for their own occupation. Such loans may be made of such amount and on such terms as to interest

(including non-liability to interest), repayment, *et cetera* as the Trustees in the particular case shall determine. The Trustees shall have discretion as to whether loans shall, in the particular circumstances of each case, be heritably secured; and

- (2) in the acquisition of suitable heritable property for the provision at their discretion of housing accommodation for Ministers and the Widows of Ministers. Such property may be made available on such terms as to rent (including non-liability to rent) *et cetera* as the Trustees, in the particular case, shall determine.

The balance of funds not required for the aforementioned purposes may be invested by the Trustees in any investment in which Trustees in Scotland are at such time entitled to invest funds according to law. The Trustees shall also have power to lodge the funds with The Church of Scotland Trust incorporated by The Church of Scotland Trust Order Confirmation Act, 1932, for investment by them in terms of their powers. The Trustees shall have power to vary the investments from time to time.

#### 9. Eligibility for Benefit of Fund

The following shall be eligible for benefit:

- (1) Retired Ministers of the Church of Scotland who are qualified to receive an Annuity from the Aged and Infirm Ministers' Fund and Pension Fund; and
- (2) The Widows of Ministers of the Church of Scotland; declaring that on remarriage such Widows shall no longer be eligible for benefit. References in this Constitution and Regulations to Ministers or Widows shall be construed according to the rules of this Section.

27 May 1969

**(b) Revised Constitution of the Housing and Loan Fund, 2015**

**CONSTITUTION OF THE CHURCH OF  
SCOTLAND HOUSING AND LOAN FUND FOR RETIRED  
MINISTERS AND WIDOWS AND WIDOWERS  
OF MINISTERS**

**Scottish Charity Number SC011353**

**1. Name and Charitable Purpose**

The Church of Scotland Housing and Loan Fund for Retired Ministers and Widows and Widowers of Ministers (hereinafter referred to as "the Fund") has been established by the General Assembly of the Church of Scotland ("the General Assembly") to facilitate the provision on behalf of the Church of Scotland ("the Church") of housing accommodation and other related assistance, on retirement, or thereafter, for those individuals holding the status of Minister of the Church of Scotland who are eligible for enrolment in, or who are in receipt of benefit from the Church of Scotland Pension Scheme for Ministers and Overseas Missionaries and/or the Church of Scotland Pension Plan, or any successor plan thereto (whether or not such enrolment has taken place); or who, having such status, serve, or have served the Church of Scotland as Ministers of charges in Presbyteries furth of the United Kingdom; and those in receipt of Ministries Council Income Protection arrangements or any successor arrangements thereto; and for Widows, Widowers, Separated or Divorced Spouses and Separated or Former Civil Partners of such individuals (all or any of whom are hereinafter referred to as "the Beneficiaries"). The term "Former Civil Partner" includes those whose civil partnership has ended through death or the dissolution of the partnership.

**2. The Trust Funds**

The capital of the Fund (which is not in the form of an endowment) consisted initially in 1969 or shortly thereafter of (a) a sum of £25,000 provided by the Church's former Committee on the Maintenance of the Ministry, (b)

a sum of around £76,000 provided by the Church's former Committee on the Aged and Infirm Ministers' Fund and (c) a sum of £25,000 provided by The Baird Trust acting under The Baird Trust Orders of 1939 and 1957, as confirmed by The Baird Trust Order Confirmation Acts 1939 and 1957 now incorporated on 23<sup>rd</sup> August 2002 as a company limited by guarantee under the Companies Acts of 1985 to 1989. Such initial provisions, together with all past, current and future receipts by the Fund in respect of Congregational contributions paid through the Church's Ministries Council, donations, legacies, rents, interests, all heritable properties, and the proceeds thereof, loans or other assets of whatever description are hereinafter referred to as "the trust funds".

**3. Charity Trustees**

**3.1** The voting members of the Church's Council of Assembly, under and in terms of the Charities and Trustee Investment (Scotland) Act, 2005, having become the Charity Trustees of the Church of Scotland Unincorporated Councils and Committees (Scottish Charity No SC011353), designated a "designated religious charity" under Section 65 of the said Act, of which the Fund is a component element, are therefore the Charity Trustees of the Fund under the said Act, and accordingly are entitled to act in a supervisory and disciplinary role in a delegated capacity on behalf of the General Assembly.

**3.2** For administrative convenience, the heritable assets of the Fund are vested in the Church of Scotland General Trustees as bare Trustees and are held by them for behoof, and at the direction, of the Fund's Trustees.

**4. The Fund's Trustees**

**4.1** Decisions as to the general strategy, policy, management, administration, investment and the application and disbursement of the trust funds are taken exclusively by the Trustees of the Fund appointed in terms of this Clause (hereinafter referred to as "the Fund's Trustees"). The trust funds shall be vested in the Fund's Trustees, subject to the terms of clause 3.2 hereof.

**4.2** The Fund's Trustees shall be a minimum of five in number and maximum of eleven in number, being:

**4.2.1** Up to three Ministers of the Church and one member of the Church appointed by the General Assembly on the nomination of the Church's Ministries Council (or any succeeding body as established by the General Assembly);

**4.2.2** Up to four persons (either Ministers or members of the Church) appointed by the General Assembly on the nomination of the Fund's Trustees;

**4.2.3** Up to three individuals appointed by the said The Baird Trust.

**4.3** The following provisions shall apply with regard to the length of time a Fund's Trustee may serve as such:

**4.3.1** With regard to those Fund's Trustees appointed in terms of Clause 4.2.1, each will serve for a term of four years, which may be renewable to allow a second four-year term.

**4.3.2** With regard to those Fund's Trustees appointed in terms of Clause 4.2.2, each will serve for a term of four years, which may be renewable to allow a second four-year term.

**4.3.3** With regard to those Fund's Trustees appointed in terms of Clause 4.2.3, none will have any limit on his or her term of office, which is at the behest of the Trustees of the said The Baird Trust.

**4.3.4** Any of the Fund's Trustees appointed in terms of Clause 4.2.1 and 4.2.2 who have served two four-year terms may not serve as a Fund's Trustee again without at least one year out of office, and then only for one further four-year term.

**4.3.5** Any Fund's Trustee appointed in terms of Clause 4.2.1 and 4.2.2 may serve for up to a further two four-year terms as a Fund's Trustee if elected also, in terms of Clause 5, as Chairperson or Depute Chairperson. However, on demitting office as Chairperson or Depute Chairperson,

where the first two four-year terms as a Fund's Trustee have expired, such Fund's Trustee shall retire not only as Chairperson or Depute Chairperson but also as a Fund's Trustee at the same time.

**4.3.6** Any Fund's Trustee, however appointed, and even if Chairperson or Depute Chairperson at the time, will be expected voluntarily to relinquish office as Fund's Trustee on or shortly after attaining the age of 75 years.

**4.4** In any of the following circumstances a Fund's Trustee may no longer serve as such and will automatically cease to be a Fund's Trustee:

**4.4.1** if by notice in writing he or she resigns his or her office; or

**4.4.2** if he or she comes to be employed by or on behalf of the Fund or receives any payment for holding the office of Fund's Trustee (other than reimbursement of out-of-pocket expenses or, if a professional person, his or her normal professional charges for any professional work carried out for the Fund, subject always to the terms of section 67 of the Charities and Trustee Investment (Scotland Act) 2005, as may be amended or re-enacted from time to time); or

**4.4.3** if he or she becomes a bankrupt person, or insolvent or apparently insolvent or makes any arrangement or composition with his or her creditors generally; or

**4.4.4** if he or she becomes incapable for medical reasons of fulfilling the duties of his or her office and such incapacity as certified by two medical practitioners is expected to continue for a period of more than six months from the date or later date of such certification; or

**4.4.5** if he or she is not permitted to be a Trustee in terms of Section 69 of the Charities and Trustee Investment (Scotland) Act 2005 (as may be amended or re-enacted from time to time); or

**4.4.6** if, in terms of section 66(5) of the Charities and Trustee Investment (Scotland) Act 2005 (as may be amended or re-enacted from time to time), he or she is considered by the other Fund's Trustees to have been in serious or persistent breach of either or both of the duties listed in sections 66(1) and 66(2) of the said Act (as may be amended or re-enacted from time to time), such Fund's Trustee being entitled to be heard prior to the other Trustees taking a decision; or

**4.4.7** if he or she dies; or

**4.4.8** if a Fund's Trustee appointed in terms of Clause 4.2.1 or 4.2.2. hereof, if he or she ceases to be a member of the Church of Scotland; or

**4.4.9** if he or she is removed from office as a Fund's Trustee by the General Assembly on disciplinary grounds on the recommendation of the Charity Trustees.

## **5. Chairperson and Depute Chairperson**

The Fund's Trustees shall appoint one of their number to be Chairperson and another to be Depute Chairperson at meetings of the Fund's Trustees, and the Chairperson and Depute Chairperson appointed shall each serve as such until the meeting following the fourth anniversary of his or her appointment, when he or she may be re-appointed for a further four year term, or a new Chairperson or Depute Chairperson appointed as may be decided by the Fund's Trustees. A Chairperson or Depute Chairperson may not serve as such for more than two four-year terms.

## **6. Officials**

**6.1** The Fund's Trustees shall appoint the Secretary of the Fund, who, if remunerated shall be employed by the Employing Agency for staff in the Church offices and on the terms and conditions set by that Agency.

**6.2** The Fund's Trustees, with the approval of the Charity Trustees, may appoint such other officials as from time to time they may consider necessary for the proper administration of the Fund and may define the duties of all such officials.

**6.3** The General Treasurer of the Church *ex officio* shall be the Treasurer of the Fund.

## **7. Conduct of Meetings**

**7.1** Regular meetings of the Fund's Trustees shall be held at such places as may be appointed by the Fund's Trustees, and such meetings shall be called by a notice sent by the Secretary or Chairperson stating generally the purposes of the meeting and addressed to each of the Fund's Trustees and posted and/or e-mailed at least five clear days before the date of the meeting, provided that in exceptional circumstances it shall be competent with the consent of a quorum of the Fund's Trustees as after-mentioned to call a meeting of the Fund's Trustees on shorter notice.

**7.2** Meetings of the Fund's Trustees will habitually take place in person but may take place where expediency dictates by telephone conference call, video conference call or by any other collective electronic means approved unanimously by them from time to time.

**7.3** In the event of the Chairperson being absent from a meeting of the Fund's Trustees, then the Fund's Trustees present at such meeting shall appoint the Depute Chairperson, whom failing, one of their number to act as the chair of that meeting.

**7.4** Any resolution shall be passed by a majority of the Fund's Trustees present at a meeting of the Fund's Trustees, and in the case of equality the Chairperson (or chair of the meeting) shall have a casting vote in addition to a deliberative vote.

**7.5** The Minutes of any meeting of the Fund's Trustees shall be submitted for approval at the following meeting of the Fund's Trustees and, if approved, shall be signed by the Chairperson (or chair of that following meeting) and the Secretary and shall thereafter be recorded as duly authenticated as evidence of the views and resolutions therein stated.

**7.6** Five Fund's Trustees shall be a quorum at meetings, of whom at least one shall be appointed in terms of Clause

4.2.2 and at least one shall be appointed in terms of Clause 4.2.3.

7.7 The business of the Fund and all its correspondence with and notification to or from the Fund's Trustees may be conducted equally validly and effectively as if by post if transmitted by fax or e-mail.

7.8 The Fund's Trustees shall meet regularly and at least once yearly with members of the Church's Ministries Council, or its successors, to keep under review matters relating to the appropriate retirement provision for Ministers of the Church and their dependants.

## 8. Legacies and Donations

Legacies and donations to the Fund shall be validly discharged by the Treasurer, or other official of the Church, so authorised by the General Assembly.

## 9. Expenses

The expenses of management of the Fund each year (including without prejudice to the foregoing generality employment costs relating to the Secretary and other staff) shall be due and payable from the trust funds.

## 10. Accounts

The Accounts of the Fund as at 31 December shall be prepared by the Treasurer each year and reported to the Fund Trustees. The Fund will be audited as part of the Annual Accounts of the Unincorporated Councils and Committees of the Church of Scotland.

## 11. Management of Trust Funds

11.1 The Fund's Trustees shall utilise the trust funds or such part thereof as may be required:

11.1.1 in the acquisition of suitable heritable property for the provision at their discretion of housing accommodation for the Beneficiaries. Such property may be made available on such terms as to rent (including non-liability to rent) *etc* as the Fund's Trustees, in the particular case, shall determine; and

11.1.2 in the making at their discretion of loans to the Beneficiaries for the purpose of assisting such persons in the purchase of housing accommodation for their own occupation. Such loans may be made of such amount and on such terms as to interest (including non-liability to interest), repayment *etc* as the Fund's Trustees in the particular case shall determine. The Fund's Trustees shall have discretion as to whether loans shall, in the particular circumstances of each case, be heritably secured.

11.1.3 in the maintenance, repair and improvement of the heritable properties owned by the Fund.

11.2 The Fund's Trustees shall not be bound to distribute the whole of the revenue of the trust funds arising during the course of any one year but shall have discretion as to what proportion (if any) be distributed and what proportion be accumulated for future distribution or for allocation to capital.

11.3 The balance of trust funds not required for the aforementioned purposes may be invested by the Fund's Trustees in any investment in which trustees in Scotland are at such time entitled to invest funds according to law. The Fund's Trustees shall in particular have power to lodge the funds with The Church of Scotland Investors Trust incorporated by The Church of Scotland (Properties and Investments) Order Confirmation Act, 1994, Scottish Charity Number SC022884 or its successors, for investment by the Investors Trust in terms of its powers. The Fund's Trustees shall have power to vary the investments from time to time.

11.4 The Fund's Trustees shall not be liable for the fall in value of any investments in which the trust funds may from time to time be placed, nor for the intromissions of any accountant, investment manager and/or factor appointed by them, nor for their own intromissions. The Fund's Trustees shall be liable only for acts of commission involving fraud and/or negligence and each for his or her acts only.

## 12. Execution of Deeds

For any purpose a document is validly executed by the Fund if it is signed on its behalf by a Fund's Trustee and its Secretary whom failing two Fund's Trustees.

## 13. Eligibility for Benefit of Fund

The following shall not or no longer be eligible for benefit, namely those

- i. Widows and Widowers of Ministers of the Church upon their remarriage or their entering into a Civil Partnership.
- ii. Separated and Divorced Spouses of Ministers of the Church upon their remarriage or their entering into a Civil Partnership.
- iii. Former Civil Partners of Ministers of the Church upon their entering into a new Civil Partnership or a marriage.
- iv. Beneficiaries of the Fund whose personal or financial circumstances improve to the extent that they no longer fall within the parameters for assistance operated by the Fund's Trustees at that time as to all of which the Fund's Trustees shall be the sole judges.

## 14. Conflicts of Interest

14.1 All Fund's Trustees and employees of the Fund have an obligation to notify any potential or real conflicts of interest, to the Secretary, or in the case of the Secretary to the Chairman, as they arise and ensure that these are minuted.

14.2 Where a Fund's Trustee or employee has so notified a potential or real conflict of interest, he or she must remove himself or herself from that section of the Trustees' meeting. In the event of any uncertainty or dispute in this respect, the matter shall be determined by the Chairperson (or the chair of the meeting).

## 15. Variation

15.1 The Fund's Trustees may at any time and from time to time propose a variation of the Constitution to the Charity Trustees for the purpose of varying or modifying

the Charitable Purpose, powers and/or other provisions of this Constitution, provided that no such variation or modification shall cause the purposes of the Fund to cease to be charitable. Such proposal for variation or modification will require a special majority of at least 75% of the Fund's Trustees.

15.2 If the Fund's Trustees at any time consider that the Charitable Purpose and/or other salient features of the Fund may better be achieved through a different constitutional format, they may propose to the Charity Trustees that the Fund be changed into such new constitutional format (be that a guarantee company or other type of organisation then available to charities), provided that:

15.2.1 the new constitutional format shall itself be recognised as a charity;

15.2.2 the Charitable Purpose shall be included (but not necessarily exclusively) within the new constitutional format; and

15.2.3 the whole trust funds (subject only to the costs of such change) be transferred to the new constitutional format.

15.3 Any changes proposed by the Fund's Trustees in terms hereof will require to be approved by the Charity Trustees and reported to the General Assembly.

## 16. Winding up the Fund

In the event of a special majority of at least 75% of the Fund's Trustees considering it either impractical to implement the Charitable Purposes in Clause 1 hereof or otherwise advisable not to continue with the Fund, the Fund's Trustees shall be entitled, in such circumstances and with the agreement of the Charity Trustees to wind up the Fund and, after satisfaction of all its debts and liabilities, to transfer the balance of its assets and funds to the Ministries Council of the Church of Scotland, or its successors, for their use in furtherance of the said Charitable Purposes.

**17. Indemnity**

Without prejudice to any other indemnity, the Fund's Trustees, and any employee of the Fund shall, so far as permissible by law, be indemnified out of the trust funds against any loss or liability (including the costs of defending successfully any court proceedings) which he, she or they may respectively incur or sustain, in connection with or on behalf of the Fund, and they shall not be answerable for the acts, receipts, neglects or defaults of each other, but each of them for his or her own acts, receipts, neglects or defaults only.

**18. Registration**

The Fund's Trustees consent to the registration hereof for preservation.

**19. Governing Law**

This Constitution and any variations or modifications thereof in terms of Clause 15 shall be governed and construed in accordance with the Law of Scotland.

September 2015