

Agreement for Use of Church Hall or Church

Partial or Shared use ONLY

It is very common for Church halls and, increasingly, Churches to be “let out” for use by community groups or individuals and organisations for commercial activities. A style terms and conditions is attached. In addition, there is also a style for a “one off event”.

When allowing use of the premises, the following points should be borne in mind:

1. These terms are solely for use where the congregation is dealing with non-Church of Scotland organisations. This circular relates to Scotland and the style complies with Scots Law. Some clauses e.g. that relating to protection of children and protected adults will require to be adapted for use by congregations outwith Scotland who should seek legal advice locally. If the organisation to be using the building is another religious body in membership of ACTS (Action of Churches Together in Scotland) then please contact the Ecumenical Relations department on ecumenical@cofscotland.org.uk. In the case of religious bodies not in membership of ACTS, the criteria for membership of ACTS will be used as a guide for discussion on a case by case basis.
2. The style is intended only for use in cases where outside organisations are being allowed partial or shared use of Church premises, e.g., for a one off evening, or so many evenings, per week, with the Congregation being entitled to sole use at all other times.
3. The style is designed to provide flexibility to both parties so that both the congregation and user can end the arrangement on a certain amount of notice. It is not appropriate for use in cases where the arrangements are to be binding on both parties to last for more than a year. In such cases, if the property is vested in the General Trustees, the matter should be reported to the Secretary of the General Trustees as it will fall to the General Trustees, in consultation with the Financial Board, to make any arrangement with the users.

In similar cases, i.e., arrangements where at the outset the users are being given rights to the premises for more than a year, where the property is vested in local trustees for the congregation, the Financial Board are strongly advised to seek legal advice. The Law Department of the Church will be pleased to act in such cases.

4. The use of the premises should not be one which is prohibited in terms of any conditions contained in the title deeds. It may be advisable to seek legal advice so that this can be checked.
5. Another factor which should be borne in mind is the possibility that - depending on the proposed use - temporary Planning or other Local Authority permissions may be needed.
6. Churches and Church Halls, benefit from full exemption from non-domestic rates. Financial Boards are entitled to charge full market rents to those using the premises without their charitable exemption from non-domestic rates being affected. Water and wastewater charges are covered by different legislation and many congregations are

currently exempted from paying such charges in terms of the Water and Sewerage Charges (Exemption) (Scotland) Regulations 2002. If the additional income however, results in the net annual income with respect to the premises exceeding the income limit the position should be reported to Scottish Water and the exemption may be withdrawn. (The limit is £60,000 from April 2010 and will increase by £1,500 per annum thereafter.)

7. Potentially, the letting of premises may be affected by Discrimination Law. The relevant legislation is The Equality Act 2010.

In particular, it should be noted that a refusal to provide (or less favourable provision of) goods, facilities and services on racial grounds constitutes direct discrimination. Similar action on the grounds that someone is, for example, a Muslim, can amount to “indirect discrimination” where this affects some racial groups more than others and cannot be justified. There has been a case in England on the issue which concerned a Church Hall.

The Equality Act prohibits discrimination on the ground of religion or belief in the provision of goods, facilities and services (which includes the letting of premises). However, it is not unlawful under the Act for a religious organisation to restrict the use or disposal of premises owned by or controlled by the organisation on such grounds. Such restrictions must however be imposed (a) by reason of or on the grounds of the religious organisation’s purposes or (b) in order to avoid causing offence on the grounds of that organisation’s religion or belief, to a person of that religion or belief.

Similarly, discrimination in the provision of goods, facilities and services on the ground of sexual orientation is illegal. There are exemptions for religious organisations but these will only apply where it is necessary to do so ‘in order to comply with the doctrine of the organisation’ or because the restriction needs to be imposed ‘so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion’s followers’. The exemptions cannot however be relied upon where a church is exercising public functions on behalf of a public authority – perhaps by receiving funding from the local Council to run an after school club.

Legally, the topic is a very complicated one and much will turn on the facts of individual cases. In appropriate cases, legal advice should therefore be sought. Congregations should also bear in mind the provisions of the relevant General Assembly legislation on this topic, namely the Act anent Discrimination (G.A. Act V, 2007).

<http://www.churchofscotland.org.uk/extranet/xchurchlaw/downloads/xchurchlaw2007act05.doc>

8. Adequate insurance arrangements should be made by the users who should be asked to exhibit Certificates of Insurance for approval by the Financial Board of the Congregation. There may be cases where small local groups may find it difficult or expensive to obtain their own insurance. At the end of the day, it will be for the Financial Board to decide whether, in any particular case, to grant a let to an “uninsured” group. Before doing so, however, they should very carefully assess the

risks involved and they may also wish to consult the Church of Scotland Insurance Company Limited for further advice. Where loss occurs due to the fault of the group - e.g., by setting the building on fire, the cost will, in all probability, be met by the Church's insurers via the Congregation's property insurance. It is to be anticipated, however, that the insurers will seek to recover the sums paid out from the group. Obviously, this could prove embarrassing in a small community. Additionally, however, there may well be occasions when the Congregation might suffer a loss and no claim could be submitted on the Congregation's insurance. As an example, not all Congregational property may be covered for theft. If for example an outside organisation omitted to secure the premises when leaving and items of Congregational property were stolen, no claim could be made and the loss would have to be recovered from the organisation.

9. The style contains a specific clause concerning lets for regulated work with children and young people or protected adults. For the avoidance of doubt, however, so far as outside groups are concerned, no actual day-to-day supervision of the Users' activities is necessary. Indeed, any "involvement" of Church personnel which might give outsiders the impression that the Users were operating in some way under the umbrella of the Congregation might have its own dangers vis-à-vis questions of legal liability. It is however entirely proper that before agreeing to the useage, certain assurances should be sought as to safeguarding procedures and this is reflected in the relative clause in the agreement.
10. Where alcohol is to be served in the premises, care will require to be taken to ensure that the Users observe the necessary licensing formalities. You may wish to refer to our separate circular on the Church and Alcohol which explains the requirements.

http://www.churchofscotland.org.uk/_data/assets/pdf_file/0019/2836/law_alcohol.pdf
11. Some uses/events may require a Theatre licence or a Public Entertainment license and again care will require to be taken to ensure that the Users observe the necessary licensing formalities. Please see our Licensing of Events circular.

http://www.churchofscotland.org.uk/_data/assets/pdf_file/0005/2849/law_theatres_act.pdf
12. Where the premises will be used for food preparation (beyond tea, coffee and biscuits) it is important that the User is aware of and familiar with the food hygiene regulations. You may wish to refer to our separate circular which explains the requirements.
13. It goes without saying that the attached style will require to be adapted depending on local circumstances and, indeed, the use which is to be made of the accommodation by outside bodies. It is only designed to give general guidance. The Law Department is more than happy to assist and so please do not hesitate to contact us for help.

CONTRACT FOR THE USE OF PREMISES

between

¹ CHURCH OF SCOTLAND CONGREGATION

and

²

For the purposes of this Agreement:

The Congregation means ³

The User means ⁴

The Premises means ⁵ together with use of ⁶

The Charge is ⁷ POUNDS () ⁸ STERLING per ⁹, and

The Time of Use means ¹⁰ from ¹¹ to ¹².

The Congregation CONSENTS to the User using the Premises for the Charge at the Time of Use on the following terms and conditions:

1. The Charge, without deduction, shall be paid in advance by the User to the Treasurer of the Congregation on ¹³ by ¹⁴ or by any means reasonably required by the Congregation. No written demand will be given for the Charge. The Charge shall be reviewed from time to time by the Congregation. The Congregation shall provide notice in writing should there be any change in the Charge. ¹⁵
2. Interest at the rate of 4 percent per annum above the base rate of the Bank of Scotland will run on any part of the Charge if it is unpaid from the due date until the date that it is paid. However, in the event that the User fails to pay the Charge when due, the Congregation may at their sole discretion terminate this Agreement with immediate effect.
3. The Premises are accepted by the User as being in good condition and repair and fit for use by the User.
4. The Premises shall be used by the User for the sole purpose of ¹⁶ and the User shall ensure that the use is compliant with the Planning Acts and any other statutory provisions or licencing requirements. If additional rates are at any time levied on the Congregation with respect to the Premises due to the User's use of the Premises, the User will be bound to reimburse the Congregation for the additional amount.

5. The User shall not make any alterations to the Premises and shall leave the Premises in a clean and tidy condition and clear of all rubbish at the end of each Time of Use.
6. The User shall make good any damage caused to the Premises or surrounding property through the use of the Premises.
7. This contract for use is a personal agreement between the Congregation and the User and cannot be assigned in whole or in part to another party.
8. The User must comply with all statutory requirements and any rules made by the Congregation concerning the use of the Premises generally.
9. The User must ensure that all entrances to and exits from the Premises are left locked and secure when the User leaves the Premises after each Time of Use.
10. This Agreement may be terminated at any time by either the Congregation or the User giving ¹⁷ weeks' notice in writing to the other party;
11. The User shall ensure that adequate insurance cover is in place for the User and all its associates and any equipment or other property brought onto the Premises and, if requested, shall exhibit the relevant policies and receipts to the Congregation. Notwithstanding the foregoing, the User shall ensure there is adequate public liability insurance cover in respect of the use of the Premises; and the Congregation shall be entitled, at their option, to require endorsement of the relevant insurance policies in their name or to insure separately against any possible claims and liabilities arising from the User's use of the Premises and to recover the relevant premiums or increases in premium, as the case may be, from the User.
12. The Congregation shall not be responsible for any loss, damage, actions, proceedings, costs, claims or demands by any party of any kind and the User shall indemnify the Congregation (including the Trustees vested in the Premises) against all such loss, damage, actions, proceedings, costs, claims or demands arising.
13. The User is aware of the legislation relating to the safeguarding of children and young people and has read and understood the relevant Church of Scotland Safeguarding materials and will follow its provisions. The User has adopted a recruitment procedure for working with children and young people which, where appropriate, includes requiring staff (whether employees or volunteers) to be members of the Protection of Vulnerable Groups Scheme as laid down by the Protection of Vulnerable Groups (Scotland) Act 2007. If the User is found to be in breach of these undertakings, the Congregation shall have the right to terminate this Agreement with immediate effect. ¹⁸
14. The User is aware of the legislation relating to regulated work with protected adults and, has read and understood the Church of Scotland Safeguarding materials and will follow its provisions. The User has adopted a recruitment procedure for working with protected adults which, where appropriate, requires staff (whether employees or volunteers) to be members of the Protection of Vulnerable Groups Scheme. If the User is found to be in breach of these undertakings, the Congregation shall have the right to terminate this Agreement with immediate effect. ¹⁹

Lastly, this Agreement will be governed by and construed in accordance with the laws of Scotland.

IN WITNESS WHEREOF these presents consisting of this and the preceding two pages are signed as follows:

At

On

..... (Session Clerk/Clerk to the Congregational Board)

..... (Print Name)

..... (Witness)

..... (Name, address, occupation of witness)

.....

.....

At

On

.....(User/Company Director)

..... (Print Name)

..... (Witness)

..... (Name, address, occupation of witness)

.....

.....

¹ Insert the name of the congregation.

² Insert the name of the individual or the name of the Company.

³ This should read The Congregational Board/Kirk Session of [insert] Church of Scotland Congregation, Scottish Charity Number SC [insert].

⁴ Insert the name of the person/company i.e. [Mr/Mrs X X] residing at [insert address] or [Insert name of company] Limited, incorporated under the Companies Acts registered number [insert] with registered office at [insert].

⁵ Insert description of Church, Church Hall, premises, part of the building concerned, then list the address of the building.

⁶ State if this is together with use of any facilities e.g. kitchen, toilet facilities, cupboards etc. and what that is for e.g. for storage of equipment. You should also regulate car parking here if this could be an issue.

⁷ Insert Charge in words.

⁸ Insert Charge in figures.

⁹ Insert week/month/year. etc.

¹⁰ From [insert time of day [] a.m./p.m. to [] a.m./p.m. on [insert particular days of week] as from to [insert end date and year].

¹¹ Insert start date and year.

¹² Insert end date and year.

¹³ Insert date/day that this is to be paid, e.g. the 1st of every month/every Monday etc.

¹⁴ Insert payment mechanism e.g. electronic transfer etc.

¹⁵ It is unlikely that a review of Charge should occur as a new contract should be entered into if it is agreed between the parties that the Charge is to increase.

Insert agreed use.

¹⁶ Insert agreed use.

Insert required amount of notice.

¹⁷ Insert required amount of notice.

¹⁸ This clause should only be inserted when the use will involve “regulated work” with children or young people as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.

¹⁹ This clause should only be inserted when the use will involve “regulated work” with “protected adults” as defined in the Protection of Vulnerable Groups (Scotland) Act 2007.