

SCOTTISH EPISCOPAL CHURCH

GENERAL SYNOD

FORM OF CONSTITUTION RECOMMENDED

for an

INCUMBENCY

(Revised 2008)

## PREFACE

The Model Constitution is, as its name indicates, intended as a guide to congregations who have no Constitution or who require to alter an existing Constitution.

Congregations considering an alteration to their constitution should consider the desirability of adopting the Model. The Office of the Scottish Charity Regulator considers that a Charge adopting this model constitution would have charitable purposes and would pass the relevant parts of the Charity test under the Charities and Trustee Investment (Scotland) Act 2005. Where Vestries wish to depart from the Model, the Registrar of the Diocese should be consulted with an explanation of why the Model is not appropriate for that particular Charge.

It is the duty of all Rectors and Priests-in-Charge and members of Vestries to make themselves acquainted with the terms of the Constitution of the Charge, and to see that these are adhered to.

Provisions in the following Model which appear in square brackets may not be applicable to all incumbencies and their applicability to any particular incumbency should be considered specifically.

## **(NAME OF CHARGE)**

(Scottish Charity Number:     )

### **CONSTITUTION**

**1. Charge.**-The Charge shall be an Incumbency known by the name of **[St XXX Scottish Episcopal Church [Place Name]** in the Diocese of [     ].

**2. Charitable status** – The Charge is established for exclusively charitable purposes, primarily for the advancement of religion and to provide public benefit. (The expression “charitable purposes” shall mean a charitable purposes as defined in section 7 of the Charities and Trustee Investment (Scotland) Act 2005 as amended from time to time (“the 2005 Act”) which is also regarded as a charitable purpose in relation to the application of the Taxes Acts from time to time in force.)

**3. Authority and Limitation of Constitution.**-The Charge shall form part of the Scottish Episcopal Church, and the Clergy, Congregation and all Officials thereof shall be subject to the Canons of that Church in force from time to time.

**4. Heritable Property.**- The heritable property of the Charge shall be vested in the Trustees of the Diocese ("the Property Trustees") in trust for the Charge<sup>1</sup>. Save as hereinafter provided in Article 28 hereof, the Property Trustees shall be under no duty to take active part in the management of the property vested in them, and shall have no personal responsibility in regard thereto, but may rely upon the proper management thereof by the Vestry, and the Property Trustees shall be indemnified out of the funds of the Charge against any liability undertaken or incurred by them.

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<sup>1</sup> *If existing heritable property is held by other trustees, consideration must be given to whether title should be transferred or whether this article should be amended.*

**5. Relationship with the General Synod.**-The Rector and Congregation shall conform to the resolutions of the General Synod or such other body as may at any time be substituted by canonical enactment therefor.

**6. Constituent Members.**-The constituent members of the Congregation shall be the communicants of not less than sixteen years of age whose names are on the Roll of Communicants of the Congregation, kept as provided for in the Code of Canons (Canon 41) or such other roll as may be substituted by canonical enactment for the Roll of Communicants.

**7. Annual Meeting.**-Once in every year, within three months after *(insert the date which may be fixed for the closing of the financial year of the congregation which should not be earlier than 30th June nor later than 30th September)* a Meeting of the constituent members of the Congregation shall be summoned by the Vestry and notice thereof shall be given during Divine Service on the two Sundays immediately preceding such Meeting: the Meeting may be held on the Sunday on which the notice has been given for the second time. The accidental omission to give notice of a meeting shall not invalidate the proceedings at that meeting. The Rector or Priest-in-Charge, if present, shall preside but in his/her absence, or during a vacancy in the Charge, the Meeting shall elect its own Chair. *(here insert a number)* shall be a quorum. The Chair shall vote only in case of an equality of votes.

**8. Business at Annual Meeting.**-It shall be the duty of the Constituent Members of the Congregation at the Annual Meeting (a) to elect from among the Constituent Members the required number of persons within the limits hereinafter specified to act as members of Vestry; (b) to elect, if not appointed at a special meeting called for the purpose from among the Constituent Members, the Lay Representative and Alternative Lay Representative (provided that no clerical Constituent

Member shall vote in such election); (c) to appoint an independent examiner or auditor as required by the Charities Accounts (Scotland) Regulations 2006 as amended or superseded from time to time to examine or audit the accounts and report thereon declaring that in the event of a vacancy arising in the office of independent examiner or auditor between Annual Meetings, the Vestry shall appoint an interim independent examiner or auditor who shall hold office until the next Annual Meeting; (d) to receive the Report and Accounts of the Vestry and the reports of the Lay Representative; and (e) to deal with any other competent business. Unless otherwise determined by the Vestry, the names of all candidates for election together with the names of their proposers and seconders shall be lodged with the Chair prior to the commencement of the meeting; no speeches in connection with the elections shall be permitted and all elections, if contested, shall be conducted by secret ballot.

**9. Special Meetings.**-Special Meetings of the Constituent Members of the Congregation may be called at any time by the Rector or at the request of either a majority of the Vestry or not less than [ ] Constituent Members given in writing addressed to the Rector or Priest-in-Charge, or during a vacancy in the Charge, to the Secretary of the Vestry. The same notice of Special Meetings shall be given as in the case of Annual Meetings (and the accidental omission to give notice shall not invalidate the proceedings at any such meeting). The notice shall specify the purpose for which the Special Meeting is to be held.

**10. Variation of Periods of Notice of Meetings.**-Notwithstanding Article 26 hereof the Bishop may, at the request of the Vestry and if he is satisfied that special circumstances have arisen, authorise the holding of the Annual Meeting outwith the time specified in Article 7 and the giving of shorter notice of meetings than that specified in Articles 7, 9 and 26.

**11. Seats in Church,** provided for the worshippers, shall be free and unappropriated.

**12. Vestry.**-The temporal affairs and the general management and control of the Charge shall be under the management of a Vestry consisting of the Rector *ex-officio*, the Lay Representative *ex-officio*, and<sup>2</sup> not more than eight nor fewer than three constituent members, three to be a quorum. The members of the Vestry from time to time shall be considered "Charity Trustees" of the Charge and have the consequent duties and responsibilities arising from that position. Any person disqualified from acting as a Charity Trustee for the purposes of the 2005 Act as amended or superseded from time to time shall be disqualified from being a Vestry member. The Vestry shall meet at least twice a year, and the Chair, who shall have a casting as well as a deliberative vote, shall be the Rector, or in the case of his/her absence, a member elected by the Vestry. Special meetings of the Vestry may be called at any time at the request of three members by notice in writing addressed to the Secretary of the Vestry or at the request of the Rector. Of the elected members at least one shall retire annually, and shall not be eligible for re-election that year<sup>3</sup>. The elected member(s) to retire shall be those who are the longest serving and, in the event of there being more than one member in such category, the identity of the member to retire shall be determined by lot. Casual vacancies in Vestry membership (or in the office of People's Warden) occurring between Annual Meetings of the Congregation may be filled by the Vestry until the next Annual Meeting of the Congregation. A casual vacancy in the office of Rector's Warden shall be filled on the nomination of the Rector. All members of the Vestry shall be selected from the constituent members of the Congregation. [The Secretary and Treasurer appointed by the Vestry, if constituent members of the Congregation, [and the Rector's Warden and the People's Warden] shall be members of the Vestry, *ex-officio* and shall be entitled to vote OR The Secretary and Treasurer appointed by the Vestry shall not be members of the Vestry and accordingly shall not be entitled to vote]<sup>4</sup>. Any Vestry member who in the reasonable

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<sup>2</sup> *In the case of congregations where it is desired to have churchwardens the following clause should be substituted for the remainder of the sentence "one churchwarden to be appointed annually by the Rector or Priest-in-Charge (to be known as the Rector's or Priest's Warden), one churchwarden to be elected by the congregation at the Annual Meeting above referred to (to be known as the People's Warden), and not more than six nor fewer than three constituent voting members, three to be a quorum.*

<sup>3</sup> *If there is significant difficulty in recruiting vestry members, it may be desired to omit the provision forbidding re-election in the year of retirement.*

<sup>4</sup> *Whether the Secretary and Treasurer should be members of the Vestry needs to be carefully considered and the position may vary from congregation to congregation. If such individuals play an actual role in the decision*

opinion of the Vestry becomes incapable of adequately discharging their functions by reason of ill health or otherwise conducts themselves inappropriately may be removed from Vestry membership upon the unanimous vote of the other Vestry members at a meeting of the Vestry after they shall have heard the Vestry member concerned unless he or she has declined to be heard or is prevented from doing so by disability, illness or long term absence from attending and the reasons for such removal shall be recorded in the minutes of any such meeting and any such removal shall be subject to the written authority, which authority can be withheld, of the Bishop within 28 days of the Vestry's vote on that matter and the Vestry member concerned shall be entitled to make written representations to the Bishop before the Bishop provides any written authority on this matter.

**13. Duties of Vestry (and Churchwardens).-** The Vestry shall ensure that the needs of the whole Church in regard to mission work at home and overseas and the other objects of the General Synod may receive the interest and support of the Congregation. The Vestry shall generally assist the Rector (subject always to his/her canonical rights and duties) in every way in their power in all matters affecting the spiritual welfare of the congregation.<sup>5</sup>

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*making of the Vestry or are involved in the general control and management of the of the administration of the congregation's affairs, they will be regarded as "charity trustees" and it would be appropriate for them to be accorded power to vote. Where such individuals are remunerated the provisions regarding trustee remuneration in the 2005 Act will need to be carefully adhered to. In circumstances where such individuals do not play such a role of general control and management (which may for example be the case where external professionals are employed in such offices, it would be more appropriate for them not to be charity trustees and accordingly not have a vote. In considering theses issues, it may be that differing conclusions are arrived at in relation to each respective role.*

<sup>5</sup> *Where Churchwardens are appointed, their duties should be set out in the constitution. In circumstances where the Churchwardens' duties are intended to reflect the provisions contained in Resolution 1 under Canon 35 and under Canon 60.2, it may be appropriate to include a provision as follows:*

*"The Churchwardens shall be responsible for seeing that a detailed inventory of all such goods and ornaments, registers and other property belonging to the charge in accordance with the print in use with the authority of the Bishops subject to any adjustments thereto which may be approved by the Standing Committee of the General Synod shall be prepared and kept up to date and shall send a copy of such inventory, amended from time to time as necessary, to the Registrar of the Diocese. With the Rector, the Churchwardens shall have care of the property and fabric of the Church building including the parsonage house or houses, halls offices and any other properties acquired in connection with the Church, unless otherwise directed, and shall see to the safe custody, maintenance, insurance, use and administration of the same. The Churchwardens shall report to the Vestry on the above matters. (In the event of such a clause being included, the earlier provisions of Clause 13 would need to be amended to reflect the fact that certain duties fall on the Churchwardens rather than the Vestry.)"*

The Vestry shall have charge of the fabric and property of the Church, and of any Rectory (or Parsonage), Schools, Halls or other property which may be acquired in connection with the Charge, as well as all gifts and bequests for endowment, charity or other purposes which may accrue to the Church from time to time. They shall be bound to keep the buildings and properties in repair and insured against fire and other risks including public liability, and to discharge all property burdens and responsibilities, and to assist the Rector or Priest-in-Charge in the safe custody of the Church plate, registers and other documents. The Vestry shall be responsible for keeping the Rectory (or Parsonage) wind and water tight, and in proper sanitary condition, the Rector being responsible to the Vestry for ordinary internal repairs - unless otherwise arranged between the Rector and the Vestry. *(The matter of internal repairs may be made the subject of a special arrangement between the Rector and the Vestry.)*

The funds of the Charge so far as not used for the acquisition of property to be used as a Rectory or Parsonage or otherwise in connection with the Charge may be invested in any kind of investment (including an investment in heritable property) but such investment may only be made after the Vestry have had regard to the suitability of the proposed investment for the Charge and the need for diversification in so far as appropriate for the Charge and before exercising any power of investment and when reviewing the Charge's investments, the Vestry shall comply with the provisions of the 2005 Act, including consideration of whether proper advice requires to be obtained. The Vestry shall have the power to delegate its investment management function in accordance with the provisions of the 2005 Act.

The Vestry should take cognisance of good practice guidance that may be issued by the Office of the Scottish Charity Regulator (“OSCR”) or by the Church from time to time in relation to issues of practice or procedure affecting the Vestry's activities and responsibilities.

The Vestry may only apply the property and funds of the Charge in furtherance of the Charge's charitable purposes.

**14. Office-Bearers to be appointed by the Vestry.-** The Vestry shall appoint a Secretary and a Treasurer who need not be members of the Vestry. The offices of Secretary and Treasurer may be combined. It shall be the duty of the Secretary (a) to ensure the keeping of minutes of the proceedings of the Vestry and of the meetings of the constituent members of the Congregation; (b) to exhibit same when called upon to any member of the Vestry; (c) to issue notices of meetings; (d) to conduct necessary correspondence, and generally (e) to conform to instructions received from the Vestry. It shall be the duty of the Treasurer (a) to prepare and keep the accounting records of the Charge; (b) to prepare annual accounts, and submit them to the independent examiner/auditor appointed in terms of Article 8 hereof; (c) to ensure lodgement in a bank or building society, in an account opened in name of the Charge for that purpose, all monies received by him/her on behalf of the Congregation; (d) to exhibit when called upon his/her accounting records to any member of Vestry, and generally (e) to conform to instruction received from the Vestry. The bank or building society account shall be operated in such manner as the Vestry may direct.

**15. Annual Report of the Vestry.-**The Vestry shall, at the Annual Meeting of the Congregation, present a (written) report upon their transactions during the preceding year, including the congregational accounts under their charge, with the independent examiner's/auditor's report thereon. The report and accounts shall be made available to the Congregation before, at or after the Annual Meeting and a copy shall be provided to any member of the Congregation upon request to the Treasurer. A copy of the accounts and of any other written reports submitted to the Annual Meeting shall be appended to the minutes of the Annual Meeting.

**16. (a) Appointment of Rector.-**The appointment of the Rector shall rest with ;<sup>6</sup> and the Patron (or Patrons) shall, immediately on a vacancy occurring, communicate with the Bishop, and thereafter act in consultation with him/her in the filling up of the appointment. Upon presentation to the Bishop of a duly qualified person, and the Bishop's acceptance of the same, he/she shall be

instituted as soon as possible. The person appointed shall enjoy as Rector all rights secured to him/her by the Canons or this Constitution as from the date of his/her institution (or collation).

Or, alternatively, where the Bishop is Patron:-

**16 (b) Appointment of Rector.-** The appointment of the Rector shall rest with the Bishop (in consultation, where required, with the Vestry or representatives nominated by the Congregation for the purpose), and upon his/her choice of a duly qualified person the institution or licensing shall follow as soon as possible. The person appointed shall enjoy as Rector all rights secured to him/her by the Canons or this Constitution as from the date of his/her institution, collation, or licensing.

**17. Remuneration for Services - Vestry Members**

Vestry members may be remunerated for services provided to the Charge but only if any such remuneration for services satisfies the provisions of the 2005 Act as amended or superseded from time to time and any such remuneration shall be decided in accordance with the provisions of Clause 22.

**18. Remuneration for Services - Stipend of Rector<sup>7</sup>.**- In the event of the Rector being appointed on a stipendiary basis, the stipend of the Rector shall be decided in accordance with the provisions of Clause 22 and be of such amount, and be provided in such manner, as may be agreed between him/her and the Vestry to the satisfaction of the Bishop, at not less than the rate of the sum approved by the General Synod as the Standard Stipend for the time being (or an appropriately reduced sum as agreed between the Vestry and Rector and approved by the Bishop in the event of the

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<sup>6</sup> *Before the adoption of this Constitution, it must be settled in a conference between the Bishop and representatives of the Communicants of the Congregation who the Patron or Patrons shall be.*

<sup>7</sup> *The provisions regarding payment of stipend may require alteration where responsibility for payment is shared between more than one charge.*

appointment being part-time). The Stipend shall be payable by equal monthly instalments not later than the last Thursday of each month less income tax and national insurance contributions and, unless otherwise agreed by the Bishop, after deduction of any sums received by the Rector by virtue of employment or other ecclesiastical or secular work. Where the Rector is a member of the Scottish Episcopal Church Pension Fund pension contributions shall be made to the fund at the rate established by the General Synod from time to time. No person shall, by reason only of his/her being a member of the Vestry, be deemed responsible personally for payment of stipend or pension contributions.

**19. Rectory (or Parsonage).**- Where a Rectory (or Parsonage) has been erected or acquired for the Charge, it shall be for the use and benefit of the Rector, and he/she shall not let it or any part of it without the consent of the Bishop and the Vestry. In the event of the death of the Rector his/her widow(er) and/or dependants permanently resident in the Rectory shall have the use of the Rectory (or Parsonage) for three months thereafter.

**20. Appointment and Stipend of Assistant Clergy.**- The Rector shall, after consultation with the Vestry, have the right to appoint any Assistant Curate or Curates whom the Bishop may license for the work of the Charge. The stipends of stipendiary Assistant Curates shall be such as are agreed upon by the Rector and Vestry, but shall be of an amount not less than the scale approved by the General Synod for the time being.

**21. Appointment to other Offices.**- The Vestry may, with the concurrence of the Rector, appoint suitable persons as Organist, Choirmaster, Verger, etc. In the case of such officials, the Rector or Priest-in-Charge shall have the right to require their dismissal, subject to an appeal to the Bishop by the Vestry should the latter disapprove.

**22. Conflict of interest** – (i) Any decision by the Vestry as to stipend, remuneration, contract,, arrangement or other personal benefit received by a Vestry member and any discussion on such items shall take place in the absence of the Vestry members concerned and shall be made in accordance with the provisions relating to remuneration in the 2005 Act as amended or superseded from time to time; and (ii) Vestry members shall declare any conflict of interest and the Secretary, or other Vestry member, shall keep a record of conflicts of interest and any Vestry member with a conflict of interest shall refrain from participating in any deliberation or decision of the Vestry with respect to the matter in question. Where there is any doubt as to whether a conflict has arisen or may arise, appropriate professional advice should be sought.

**23. Resignation of Rector.-** If the Rector shall desire to resign his/her Charge, he/she must give at least three months' notice of such intention in writing to the Patron (or Patrons), to the Vestry and to the Bishop. During the interval he/she shall be responsible for the usual duties, except with the sanction of the Bishop.

**24. Enforced demission of Incumbency.-**The Incumbency shall become vacant, and the Patron or Patrons shall proceed to a new appointment as if the vacancy had occurred by resignation, taking immediate effect, in any of the following events, viz:-

- (1) If the Rector shall renounce or forsake Communion with the Scottish Episcopal Church.
- (2) If he/she shall be canonically removed from office, disqualified from holding office or prohibited from the exercise of the ministry of a priest under the provisions of Canon 54 of the Code of Canons or similar canonical provision.
- (3) If he/she is the subject of canonical suspension for a definite period of time (but not including suspension under Canon 54 of the Code of Canons pending the outcome

of proceedings under that Canon), and the Vestry resolve in respect thereof that it is expedient that the Incumbency becomes vacant, and the Bishop approves in writing.

- (4) If the Charge is declared to be vacant under the provisions of Canon 13 of the Code of Canons or similar canonical provision.
- (5) If the Charge is declared to be vacant under the provisions of Canon 64 of the Code of Canons or similar canonical provision.
- (6) If the Charge is declared to be vacant under the provisions of Canon 53 of the Code of Canons or similar canonical provision.

**25. Arrangements during a Vacancy.**-The care of the vacant charge both in the provision of services and the pastoral care of the congregation shall be the responsibility of the Bishop, who may appoint a priest to act as interim pastor or place the charge in the care of a Diocesan Chaplain or invite some other cleric to take services and attend to other pastoral duties. The emoluments and expenses during a vacancy shall be provided by the Vestry. The Communicants and other Rolls and Registers of Baptisms, Confirmations, Marriages, Funerals and Burials shall be held by such person and in such manner as the Bishop may direct.

**26. Alterations in Constitution.**-No alteration shall be made in this Constitution as regards Article 3 hereof, which is fundamental. As regards the other Articles hereof, alterations may be made by a Resolution passed at a special meeting of the constituent members of the Congregation by a majority of two-thirds of those present and voting, confirmed at a special meeting held not sooner than one nor later than three calendar months thereafter by a simple majority of those present and voting, and afterwards assented to in writing by the Bishop. The notice calling such meetings shall specify their purpose and shall state where a copy of the suggested alterations may be inspected.

Any such alteration must be notified or consented to by OSCR in accordance with the 2005 Act as amended or superseded from time to time.

**27. Possible Suspension of this Constitution.**-If at any time (whether during a vacancy in the incumbency or not) it shall happen that the Charge shall become so reduced in numbers or in financial resources that the Constitution of the Church can no longer be kept in operation nor provision made for the maintenance of a Rector, this Constitution may be suspended, in accordance with the provision laid down for such an eventuality in the Code of Canons (Canon 36) or similar canonical provision.

**28. Possible extinction of Charge.**-If it shall be decided by the Bishop in Synod, with the concurrence of the Diocesan Synod, that it is impracticable to maintain the services of the Charge, all the rights and duties of the Vestry as guardians of the property and funds shall devolve upon the Property Trustees as previously appointed in Article 4 hereof, a majority of whom - subject always to the veto of the Bishop - shall form a quorum for transacting any necessary business, and all such properties and funds as may be disposable shall be disposed of or utilised as the Bishop in Synod, with the concurrence of the Diocesan Synod, may from time to time determine. In the event of an emergency, pending the summoning of the Diocesan Synod, the Bishop in consultation with the Property Trustees will take such steps as may seem to him to be necessary and right. The Bishop or Property Trustees shall ensure that appropriate consents are obtained from OSCR in relation to any amalgamation, winding up or dissolution of the Charge.

**29. Custody and Registration.**-This Constitution shall be authenticated in duplicate and one part shall be lodged with the Diocesan Registrar, the other part being retained by the Vestry. A copy shall be engrossed in the minute book and a docquet shall be signed therein by the Rector or Priest-in-Charge and Assistant Clergy upon entering office, declaring their willingness to abide thereby. Any constituent member may obtain a copy on payment of the cost thereof to the Treasurer. Any person

may request the Charge to provide them with a copy of this Constitution and the Charge's most recent statement of account in terms of s23 of the 2005 Act and any such request, if reasonable, should be implemented by the Charge upon payment of the cost of supplying the document to the Treasurer. Titles or other original documents referring to the property and assets of the church shall be lodged with the Diocesan Registrar, and an inventory of them engrossed in the minute book for convenience of reference.

**30. Reference.**-In the event of any difference arising among the Rector, Assistant Clergy, Vestry or constituent members of the Congregation or any of them with regard to the interpretation of this Constitution or the rights or obligations of parties hereunder or otherwise relating hereto, the same shall be referred to the Bishop of the Diocese for his/her decision, whose award or awards, interim or final, shall, subject to a right of appeal to the Episcopal Synod, be final and binding.

**31. Indemnity Insurance** – The Vestry may purchase and maintain from the Charge's funds insurance against any liability and associated matter which by virtue of any rule of law may attach to a Vestry Member or Property Trustee in respect of negligence, default, breach of duty of care of which he/she may be guilty in his or her capacity as a Vestry Member or Property Trustee.

(Place) (Date)

The foregoing Constitution was adopted by Resolution passed at the ..... meeting of the Congregation of the Incumbency known by the name of ..... situate at ..... in the Diocese of ..... of the Scottish Episcopal Church of this date.

..... Chair of said ..... Meeting

(Place)(Date)

Approved.

..... Bishop of the Diocese of .....