

## APPENDIX III

### PROPERTY AND TRUSTEES

#### (1) Property

##### FREE CHURCH MODEL TRUST DEED

ACT XVIII, 1844: ACT ANENT THE TRUST DEED

The General Assembly having called for the Report of a Committee appointed to consider the whole matter of the Trust Deed, the same was given in and read. The Assembly approve of the same, and enacted, and do hereby enact, in terms of said Report the tenor whereof follows, viz.:—

Your Committee have had several meetings, and deliberated very fully on the whole subject remitted to them, and they unanimously approve of, and recommend the Assembly to adopt, the third or intermediate plan recommended by the Special Commission of last Assembly, viz.:—

I. “That the property of each place of worship be vested in Trustees chosen by the congregation, to be held for the congregation, in communion with the Free Church, as attested to be so by the Moderator and Clerk of the General Assembly; that Church to be identified as in the Model Trust Deed; the management of the property to be in the Deacons’ Court — all, as nearly as possible, as under the first plan.

II. “That in the event of a certain proportion of the Ministers and Elders, members of the Church Courts, separating from the general body, and claiming still to be the true *bona fide* representatives of the original protesters of 1843, and to be carrying out the objects of the Protest more faithfully than the majority, then, whatever the Courts of Law may determine, as to which of the contending parties is to be held to be the Free Church, it shall be competent for each congregation, by a majority of its members in full communion, to decide that question for itself, so far as the possession and use of their place of worship and other property are concerned, with or without compensation to the minority, — such compensation to be settled by arbitration”. It being understood that a disruption of the Church in the sense referred to in this extract shall consist only in the simultaneous separation, that is, the separation from the general body *at once*, or within a period not exceeding three months, of at least one-third of the ordained ministers of the Church, having the charge of congregations in Scotland; and that such separation shall take place only on the professed grounds stated in the said deliverance of the Commission of Assembly; and it being further understood that, in order to determine who are members of the congregation entitled to dispose of the property in such a case, a roll of all the members of the Church, in full communion, shall be kept in each congregation, and annually attested by the Presbytery of the

bounds; and that all such members, and such only, shall be entitled to vote in regard to the disposal of the property as have had their names on said roll for at least twelve months previous to the separation of the said one-third of ministers from the general body.

JAMES BEGG, *Convener*

*Model Trust-Disposition* executed in conformity with the draft approved of by the General Assembly of the Free Church of Scotland, and by special reference to which it is recommended that all the churches and other property belonging to the congregations in connexion with said Church should be held:—

We, John Hamilton, Esq., Advocate; John Cadell, Esq., Advocate; John Murray, Esq., residing at Ainslie Place, Edinburgh; Robert Paul, Esq., Manager of the Commercial Bank of Scotland; James Smith, Esq., Builder in Edinburgh; and Thomas Thomson, Esq., Writer to the Signet, a majority and more than a quorum of the Building Committee appointed by, and authorised to act for behoof of the Kirk Session and congregation of St. George's Free Church of Edinburgh, and as such, having power and being authorised and required, in manner after mentioned, to grant the disposition after written of the subjects and others after described, CONSIDERING, that by disposition dated the 11th, 15th and 25th days of May, and 1st day of June, and 11th day of July, all in the year 1844, etc. (*here follows the narrative of the conveyance in favour of these parties, and of their title and authority to grant this deed, and that certain ministers and elders had separated from the Established Church of Scotland, and now formed a body of Christians, known by the name of the Free Church of Scotland, separate and distinct from the Established Church, — after which the inductive clause proceeds as follows:*) AND WHEREAS, in order to secure and invest the foresaid subjects and others, and buildings erected on the ground thereof, in connection with the said Free Church of Scotland, it has been agreed to convey the same to the parties after named and designed, as Trustees, in manner and to the effect following: THEREFORE we, the said John Hamilton, etc., have Alienated and Disposed, as we do hereby Sell, Alienate, Dispose, Assign, Convey and Make Over, etc., heritably and irredeemably, to and in favour of the said John Cadell, Advocate (*here follow the names and designations of the Trustees, thirty-three in number*); Trustees for the foresaid Congregation of St. George's Free Church of Edinburgh, belonging and adhering to the said body of Christians called the Free Church of Scotland, and presently worshipping in Edinburgh, under the pastoral charge of the Rev. Dr Robert Smith Candlish, and to such other person or persons as may, from time to time, be appointed, in virtue of the powers and provisions hereinafter contained, to act in the trust after specified and to the acceptors and survivors, and acceptor and survivor, and the heir of the last survivor of the said Trustees, whether herein named or to be appointed, as said is, the majority of accepting trustees, in life for the time, being always a quorum, and to the assignees and disponees of the said accepting Trustees, whether named or to be appointed as aforesaid, in life, for the time, or of their said quorum, ALL and WHOLE, etc. (*Here follows a description of the subjects*). BUT DECLARING that these presents are granted IN TRUST ALWAYS, for the ends, uses, and purposes, and with the powers, and with and under the conditions, provisions and declarations after specified: THAT IS TO SAY, in trust for the ends, uses, and purposes, and under the provisions and declarations following, viz.:— FIRST, UPON TRUST, That the Building or Place of Worship erected, or in the course of being erected, upon the ground hereby disposed, or any building or Place of Worship that may hereafter be built and be erected thereon, with the appurtenances thereof, shall in all time coming be used, occupied and enjoyed, as and for a Place of Religious Worship, by a Congregation of the said body of Christians called the Free Church of Scotland, or of any united body of Christians composed of them, and of such other body or bodies of Christians as the said Free Church of Scotland may, at any time, hereafter, associate with themselves, under the foresaid

### PROPERTY AND TRUSTEES3

name of the Free Church of Scotland, or under whatever name or designation they may assume; and to be made use of by such Congregation, occupying and enjoying the same for the time being, in the way and manner in which, by the usages of the said body, or united body of Christians, Places of Religious Worship may be, or are in use to be, occupied and enjoyed; SECONDLY, UPON TRUST, That the said Trustees or Trustee acting for the time, shall, at all times, and from time to time, hereafter PERMIT and SUFFER to preach and expound the Holy Scriptures, and administer ordinances, and perform the usual acts of Religious Worship within the said Building or Place of Worship, erected or to be erected, as said is, such person or persons, and such person or persons only, as may or shall, from time to time, be authorized or appointed so to do, by the said body or united body of Christians, acting through the medium of its Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, or according to the form or forms in use with the said body, or united body, for the time: PROVIDING always, as it is hereby expressly PROVIDED and DECLARED, that no person or persons, even holding such authority and appointment, as aforesaid, nor any person or persons whatsoever, shall have any right or title to pursue the said Trustees or Trustee, acting under these presents for the time, in any Court of Law or Justice, for the purpose, or with the object and intent, either of obtaining such permission and sufferance as said is, or the continuance thereof, or of obtaining in any manner of way whatever, liberty or the continuance of liberty, to preach and expound the Holy Scriptures, or administer ordinances, or to do or perform any act of Religious Worship or other act or thing, whatsoever, within the said Building or Place of Worship, erected, or to be erected, as said is, or with the object and intent of, in any way, controlling the said Trustees or Trustee, in reference to the use, occupation, management or disposal of such Building or Place of Worship, unless with the express consent, and concurrence, of the General Assembly of the said body, or united body of Christians, or of the Commission of such Assembly, previously had, to such pursuit; of which consent, and concurrence, the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body or united body of Christians, or of their then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices for the time being; which written Certificate shall be produced along with the summons, or other proceeding, commencing such pursuit, otherwise the same shall be utterly incompetent, void, and null, albeit such Certificate really may exist: DECLARING, as it is hereby expressly PROVIDED and DECLARED, that, in the event of any person or persons, even holding such authority or appointment, as aforesaid, or any person or persons whatsoever, pursuing the said Trustees, of Trustee, as aforesaid, unless with such express consent and concurrence as aforesaid, previously had to such pursuit, as said is, evidenced as aforesaid, such person, or persons shall, immediately on such pursuit being commenced, *ipso facto*, forfeit and lose all and every right, title, and interest, and claim and demand, of whatever description, under these presents, and shall, from thenceforward, cease to have any concern therewith, or interest therein: AND PROVIDING, further, as it is hereby further expressly PROVIDED and DECLARED, that whensoever any person holding such authority or appointment, as said is, and enjoying the permission and sufferance foresaid, shall by a sentence of the said body, or united body of Christians, pronounced by one or other of its Presbyteries, Provincial Synods, or by its General Assembly, or Commission of such Assembly, for the time being, or in any other way, or manner, in use in such matters, for the time, by the said body, or united body of Christians, be deposed, or suspended, from office or cut off from the said body, or united body of Christians, or declared no longer a Minister thereof, his authority and appointment foresaid, shall, *ipso facto*, cease and determine, and the said Trustees, or Trustee acting for the time, shall not only be no longer bound, but be no longer entitled, to permit or suffer him to preach and expound the Holy Scriptures, or administer ordinances, or do or perform any act of Religious Worship, or other act or thing whatsoever, within the said Building, or Place of Worship, erected, or

to be erected, as said is; and shall be bound and obliged to debar him therefrom, aye and so long as he remain deposed or suspended, or cut off as aforesaid: THIRDLY, UPON FURTHER TRUST, That the said Building, or Place of Worship, erected, or to be erected, as said is, and whole appurtenances thereof, and generally the whole subjects hereby disposed, shall be under the immediate charge and management (except always as regards the authority and appointment, and relative permission and sufferance, before mentioned) of the Elders and Deacons, or Elders acting as Deacons, for the time being, of the Congregation in the use, occupation, and enjoyment for the time, of such Building or Place of Worship, — such Elders and Deacons, or Elders acting as Deacons, being always subject to such control, as shall, or may, be provided, from time to time, by the said body, or united body of Christians, through the medium of its Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies, or in the way and manner generally in use in the said body, or united body, for the time: DECLARING always, as it is hereby expressly PROVIDED and DECLARED, that it shall not be in the power of the said Deacons, or Elders, or any of them, or of any, or all, of the individual members of the Congregation, in the use, occupation, and enjoyment, for the time being, of the said Building, or Place of Worship, and appurtenances thereof, or of any or all of said parties, either to maintain themselves in any use, possession, occupation, or enjoyment of the same, as against the said Trustees or Trustee, acting for the time, or to institute against the said Trustees or Trustee, acting for the time, any action, suit, or proceeding, before any Court of Law or Justice, for the purpose, either of obtaining, or maintaining such possession, use, occupation, or enjoyment, or of controlling in any way the said Trustees or Trustee, in reference to the use, possession, occupation or enjoyment, or management, and disposal of such Building, or Place of Worship, unless with the express consent and concurrence of the General Assembly of the said body, or united body of Christians, or Commission of such Assembly, previously had; of which consent and concurrence the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body, or united body of Christians, or of their then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices, for the time being; which written Certificate shall be produced along with the summons, or other proceeding, commencing such action, suit, or proceeding; otherwise such action, suit, or proceeding shall be utterly incompetent, void and null, albeit such Certificate may really exist: DECLARING, as it is hereby expressly PROVIDED and DECLARED, that, in the event of any Elders and Deacons, or Elders or Deacons, one or more, or Members or Member of any Congregation, as aforesaid, or all or any of them, instituting against the said Trustees, or Trustee, any action, suit, or proceeding, as aforesaid, for the purposes foresaid, or any of them, unless with such express consent and concurrence as aforesaid, previously had, as said is, evidenced as aforesaid, such party or parties, instituting said action, suit, or proceeding, as aforesaid, shall, immediately on the same being instituted, *ipso facto*, forfeit and lose all and every right, title, and interest, and claim and demand, of whatever description, under these presents, and shall, from thenceforward, cease to have any concern therewith, or interest therein: FOURTHLY, UPON FURTHER TRUST, That the said Trustees, or Trustee, acting for the time, shall, at all times, be subject, in the management and disposal of the said Building or Place of Worship, and appurtenances thereof, and whole subjects hereby disposed, and in all matters and things connected therewith, to the regulation and direction of the General Assembly for the time being, of the said body, or united body of Christians, and shall be liable and bound to conform to, implement, and obey, all and every the Act, or Acts, of the General Assembly for the time being, of the said body, or united body of Christians, in reference thereto; and the Moderator and Clerk of the said General Assembly of the said body, or united body of Christians, or the parties generally known, or understood, to hold those offices for the time, shall, at all times, have full power, and sufficient status, and right and interest, to pursue, or defend, any action or actions, in whatever Court, or Courts of Law or

## PROPERTY AND TRUSTEES5

Justice, for the enforcement, maintenance, or protection, of the rights, interests, or privileges of the said body, or united body of Christians, or General Assembly thereof, in, or in any way connected with, the subjects hereby disposed, and Building, or Place of Worship, erected, or to be erected, thereon, and appurtenances thereof: DECLARING always, that a Certified Copy, under the hands of the Moderator and Clerk, of the said General Assembly for the time being, or of the then immediately preceding General Assembly of the said body, or united body of Christians, or of the parties generally known, or understood, to hold those offices, for the time, shall always be legal and admissible evidence, in all actions, matters, and things, arising under, or out of, these presents, of the terms of any Act or Deliverance of the General Assembly of the said body, or united body of Christians, or Commission thereof, pronounced, passed, or that may be passed or pronounced; and that a Certificate, under the hand of the Moderator and Clerk of the said Assembly for the time being, or of the parties generally known, or understood, to hold those offices for the time, attached to such Certified Copy, and bearing the date of such Act or Deliverance, and Certifying that the same is, either wholly, or in part, an existing Act of the said Assembly, or Commission thereof, shall always be legal and admissible evidence, in all actions, matters, and things, as aforesaid, of the date of such Act or Deliverance of the said Assembly, or Commission thereof, and of its being still, either wholly or in part, an existing Act or Deliverance as aforesaid: AND DECLARING, further, that a Certified Copy of any Act or Deliverance of any of the Synods or Presbyteries of the said body or united body, under the hands of the Moderator and Clerk of any such Synod or Presbytery respectively, or of the parties generally known and understood to hold those offices for the time, shall always be legal and admissible evidence in all actions, matters, or things arising under or out of these presents, of the terms and date of any Act or Deliverance pronounced by any such Synod or Presbytery respectively: FIFTHLY, It is hereby expressly PROVIDED and DECLARED, That the said Trustees, or Trustee, acting for the time, shall always have full power and liberty to raise, prosecute, and follow forth, whatever action, suit, or proceeding, they may think proper, in whatever Court, or Courts, of Law or Justice, for the purpose or with the intent and object, of excluding any party or parties whatsoever, from all or any use, possession, occupation, or enjoyment, of the Building or Place of Worship, erected or to be erected, as said is, or any part thereof, or generally of the subjects hereby disposed, or any part thereof; and that no party, or parties, whatsoever, shall have any right, or title, whatsoever, to defend such action, suit, or proceeding, either in virtue of these presents, or otherwise, unless with the express consent and concurrence, as aforesaid, of the General Assembly of the said body, or united body of Christians, or the Commission of such Assembly, previously had, to such defence; of which consent and concurrence, the only legal or admissible evidence shall be a written Certificate, under the hand of the Moderator and Clerk of the General Assembly of the said body, or united body of Christians, or of their then immediately preceding General Assembly, or under the hand of the parties generally known, or understood, to hold those offices for the time being; which written Certificate shall be produced along with such defence, otherwise the same shall not be maintainable, but be incompetent, void, and null, albeit such Certificate may really exist: SIXTHLY, It is hereby further expressly PROVIDED and DECLARED, That the said Trustees, or Trustee, acting for the time, shall not have power to burden the said Building, or Place of Worship, or appurtenances thereof, or, generally, the subjects hereby disposed, or any part thereof, with any debts or sums of money, or to sell, alienate, or dispose the same, or any part thereof, unless for the purpose of providing another Place of Worship for behoof of the said body or united body of Christians, in a more suitable or convenient situation; and then only with the consent, first had and obtained, of the General Assembly for the time being, of the said body, or united body of Christians; of which consent the only legal and admissible evidence shall be a Certificate under the hand of the Moderator and Clerk of the General Assembly, for the time being, or of the then immediately preceding General Assembly, or under the hand of the parties generally known, or

understood, to hold those offices for the time: PROVIDED ALWAYS, however, and DECLARING, that if, at any time, sufficient provision shall not be made by the Congregation in the use, occupation, and enjoyment of the said Building or Place of Worship, for the time being, or by the Deacons, or Elders acting as Deacons, thereof, for paying the feu-duties, public and parochial burdens, premiums of insurance, and ordinary charges attendant on the property, for keeping the same in repair, or otherwise, then the said Trustees, or Trustee, acting for the time, themselves making provision therefor, and in that case only, shall be entitled, for their relief of their advances for the purposes above mentioned, or any of them, to sell and dispose of the said Building, or Place of Worship, and generally the whole subjects hereby disposed, or any part thereof, free from the whole conditions and purposes of this trust; they always accounting to the General Trustees appointed by the said General Assembly upon the 27th day of May 1844 years, to hold any property to be bequeathed or conveyed to them for behoof of the said Free Church, or of the said body, or united body of Christians, and to the acceptors of the said General Trustees, or their successors in office, for the balance of the price thereof, after replacing any sums advanced, or provided by them for the purpose foresaid, or any of them, and all expenses attendant on the sale; but the purchaser, or purchasers, having, as he or they are hereby expressly declared to have, no concern whatever with such accounting; and the receipts of the Trustees, or Trustee, acting for the time, being always a sufficient discharge and exoneration to the purchaser, or purchasers, for payment of the price: BUT DECLARING always, as it is further hereby specially provided and declared, that in the event of such sale being considered necessary, an offer to sell the said subjects shall, in the first place, be made to the General Trustees foresaid, for payment of the sums which may have been expended by the said Trustees, and may be due to them as aforesaid: And the said General Trustees shall be entitled to purchase the said subjects for payment of the sums which may have been advanced by and may be due to the Trustees of the said Place of Worship, as aforesaid: And the said Trustees last mentioned, on receiving payment of the said sums, shall be bound and obliged to convey the said subjects to the said General Trustees accordingly: SEVENTHLY, It is hereby also expressly PROVIDED and DECLARED, That it shall, at all times, be in the power of any Trustees, or Trustee, whether hereby named, or that may be appointed in virtue of the powers and provisions hereinafter contained, who may have acted in the said trust, to resign the Trusteeship; and that, in the event of any Trustees, or Trustee, whether named or to be appointed, as said is, ceasing to be members of the said body, or united body of Christians, then, and in that case, such Trustees, or Trustee, shall, *ipso facto*, cease to have any right to act under these presents, and the trust shall be thenceforward conducted by the other Trustees, and if such Trustees, or Trustee, ceasing as said is, were actually dead: EIGHTHLY, It is hereby further expressly PROVIDED and DECLARED, That it shall be, at all times, in the power of the Congregation in the use and occupation of the said Building, or Place of Worship for the time being, and such Congregation is hereby expressly empowered, from time to time, and as often as to it shall seem proper and expedient, to appoint, at a meeting called on ten free days' notice, given from the pulpit, immediately after Divine Service in the forenoon, such notice always specifying the object for which the Meeting is called, Additional Trustees to act under these presents, along with the Trustees who, at the date of such appointment, are surviving and acting; and each and every Additional Trustee, so appointed, shall, by virtue of such appointment, be, *ipso facto*, instantly invested with the same right of property, and with all and every the same rights, powers, and privileges, as any individual Trustee who is actually named and designed in these presents, and infert, or why may be infert under the same; such Additional Trustee being, at the same time, always subject and liable, in the same way as such original Trustee, to the whole conditions, provisions, and declarations herein set forth: AND the said Trustees, or Trustee, acting for the time, shall on every occasion of such appointment of Additional Trustees, be bound and obliged to execute a formal Deed of Assumption of such Additional Trustees, containing a formal, and in

all respects, complete conveyance of the subjects hereby disposed, in favour of such Additional Trustees and of themselves, and otherwise in terms of these presents; but such Additional Trustees shall, even before the execution of such conveyance, and immediately on their appointment, as said is, have the full right, power, and privilege, of acting in the trust in the same way as any individual Trustee actually named and designed in these presents, and infert, or who may be infert under the same: NINTHLY, It is hereby specially PROVIDED and DECLARED, That if, at any time hereafter, one-third of the whole ordained Ministers having the charge of Congregations of the said body, or united body of Christians, or any larger number of the said ordained Ministers, having charges as aforesaid, shall simultaneously, or within a consecutive period not exceeding three calendar months, not only publicly separate from the said body or united body of Christians, but at the same time publicly claim and profess to hold, truly and *in bona fide*, the principles of the Protest of 18th May 1843, herein-before recited, and to be carrying out the objects of the said Protest more faithfully than the majority of the Ministers of the said body, or united body of Christians, and shall unite in forming one body of Christians, having Kirk-Sessions, Presbyteries, Provincial Synods, and a General Assembly, then, and in that case, and anything herein to the contrary notwithstanding, it shall be competent to, and in the power of, a majority of the Congregation, in the use, occupation, and enjoyment of the said Building or Place of Worship, for the time, to provide and declare, by a Deed of Declaration and Appointment under their hands, to that effect duly executed, that the ground hereby disposed, and Building or Place of Worship then upon the same, shall, from thenceforward, be held as in connexion with the body of Christians adhering to the Ministers who shall have separated as aforesaid; and, for this purpose, to require and appoint the said Trustees, or Trustee, acting under these presents for the time, to convey and dispose the ground hereby disposed, and the Building, or Place of Worship, then upon the same, and whole appurtenances thereof, to any three or more Trustees in the said Deed of Declaration and Appointment named, to be held by such new Trustees, and their successors in trust as after mentioned; And, on such Deeds of Declaration and Appointment being executed as said is, the Trustees, or Trustee, acting under these presents for the time, shall be bound and obliged, as they are hereby bound and obliged, at the expense always of the receivers, and on being entirely freed and relieved of all pecuniary obligations then affecting the subjects hereby disposed, or Buildings thereon, or affecting them as Trustees, or Trustee, under these presents, or for or to which they, as such Trustees or Trustee, may be subject or liable, but no sooner or otherwise, to convey and dispose the ground hereby disposed, and the Building or Place of Worship, then upon the same, and whole appurtenances thereof, to the said new Trustees who shall be in the said Deed of Declaration and Appointment named, and their successors, in trust for the said persons, subscribers of the said Deed of Declaration and Appointment as a Congregation of the said body of Christians who shall have separated as aforesaid, and for the successors of such persons, forming such Congregation for the time being; such new Deed of Trust to be, *mutatis mutandis*, as nearly as possible in the terms and of the import of these presents, and to have for its object the placing the said Congregation of the said body of Christians who shall have separated as aforesaid, and the Minister of such Congregation, and the Elders and Deacons, and Elders acting as Deacons thereof, and the said body of Christians who shall have separated as aforesaid, and its Kirk-Sessions, Presbyteries, Provincial Synods, and General Assembly, and the said new Trustees themselves, in the same relation, respectively, to the ground hereby disposed, and Buildings thereon, and appurtenances thereof, and in the same relation to each other, in reference thereto, as was held before the granting of the said new Deed of Trust by the Congregation using, occupying, and enjoying the same in virtue of these presents, and the Minister of such former Congregation, and the Elders and Deacons, and Elders acting as Deacons thereof, and the said original body, or united body of Christians, and its Kirk-Sessions, Presbyteries, Provincial Synods, and General Assemblies, and the said Trustees, or Trustee, acting under these presents:

TENTHLY, It is hereby expressly PROVIDED and DECLARED, That in the event of a Deed of Declaration and Appointment, and new Deed of Trust, being executed as aforesaid, the parties signing such Deed of Declaration and Appointment shall be subject and liable to pay and make good to the minority of the Congregation with whom they were previously connected, who did not sign the said Deed, and for behoof of the said body, or united body of Christians, with which also they were previously connected, a proportion of the net value of the subjects disposed by such new Deed of Trust, corresponding to the number of such minority, as compared with the number of subscribers to the said Deed of Declaration and Appointment: ELEVENTHLY, It is hereby expressly PROVIDED and DECLARED, That no person shall be deemed or taken to be an ordained Minister, having charge of a Congregation of the said body, or united body of Christians, in the sense of these presents, unless his name shall appear in an Annual Roll or List of Ordained Ministers, having charges of Congregations belonging to the said body, or united body of Christians, to be annually attested by the Moderator and Clerk for the time of the General Assembly of the said body, or united body of Christians; and that no person shall be deemed or taken to be an ordained Minister, having charge as aforesaid, in the sense of these presents, any longer than his name shall continue to appear in the said Annual Rolls or Lists, attested as aforesaid: TWELFTHLY, It is hereby further PROVIDED and DECLARED, That no person shall be deemed or taken to be a member of Congregation, in the sense of these presents, or shall be entitled to vote or act in any of the proceedings of the congregation, unless the name of such person shall appear in the Annual Roll or List of the members of the congregation, in the use, occupation, and enjoyment of the said Place of Worship, being in full communion with the said body or united body of Christians, to be annually attested by the Presbytery connected with the said body, or united body of Christians, of the bounds in which such Place of Worship is situated; and in the event of a disruption as aforesaid, no person shall be entitled to vote or subscribe in relation thereto unless the name of such person shall have appeared on said Roll, attested as aforesaid, for at least twelve calendar months next immediately preceding the public separation or disruption aforesaid; and that no person shall be deemed or taken to be a Member of Congregation in the sense of these presents, or shall be entitled to vote or act as aforesaid, any longer than his name shall continue to appear in the said Annual Rolls or Lists of Members of Congregation, attested as aforesaid: THIRTEENTHLY, It is hereby further PROVIDED and DECLARED, That these presents are granted, and the foresaid subjects and other disposed, with the servitudes and under the conditions and declarations following, viz., (*here follow certain conditions, Etc. which have reference exclusively to the ground of St. George's Free Church*).

[THEN FOLLOW Obligation to Infeft. Procuratory of Resignation. Assignment to the Writs and Rents. Clause of Registration. Precept of Sasine, and other clauses in usual form.]

*Dated 9th, 11th, and 12th, and recorded in the Books of Council and Session 13th November 1844.*

ACT V, 1967: ACT EFFECTING EMENDATIONS IN LEGISLATION GOVERNING THE SALE OF  
CHURCH PROPERTY  
(Amending Act XVIII, 1844; Act VIII, 1863; Act X, 1875; and Act IV 1889)

The General Assembly give effect to the recommendations of the Church's Law Agents regarding sale of congregational property held in terms of the Model Trust Deed and amend the legislation governing the sale of property as follows:—

## PROPERTY AND TRUSTEES<sup>9</sup>

(a) Act XVIII, 1844, section six, shall be amended by the deletion of the words from the beginning of the section up to, and including, the second reference to “united body of Christians”, and the insertion in their place of the wording undernoted:

“It is hereby further expressly provided and declared, that the said Trustees, or Trustee, acting for the time, shall not have power to burden Congregational property, held in terms of this deed, or the Place of Worship, or appurtenances thereof, or, generally, the subjects hereby disposed, or any part thereof, with any debts or sums of money, or to sell, alienate or dispoise the same or any part thereof, unless for the purpose of providing more suitable accommodation for behoof of the said body, or united body of Christians; and then only with the consent, first had and obtained, of the General Assembly, or its Commission, for the time being, of the said body or united body of Christians, of which consent the only legal and admissible evidence shall be a certificate under the hand of the Moderator, and/or, the Clerk of the General Assembly, for the time being, or of the then immediately preceding General Assembly, or under the hand of the parties or party, generally known, or understood, to hold such offices or office, for the time; and that only the General Assembly shall have power to authorise the sale of congregational property held in terms of the Model Trust Deed for any purpose other than the aforesaid, in special circumstances that may arise”.

(b) Act VIII, 1863, paragraph 1, shall be amended by the addition of the following:— “or provided the sale proposed is for the purpose of obtaining more suitable accommodation, that he may advise the Commission of Assembly, as the time of receiving the application may require”.

(c) Act X, 1875, shall be amended by inserting in the last line, following the words “General Assembly”, the words, “or its Commission”.

(d) Act IV, 1889, shall be amended to read:—

“The General Assembly declare that no authority granted by them, or their Commission, for the sale or transference of Church Property shall be acted on, after the lapse of five years from its date, without a new application to the Assembly, or its Commission, in terms of Act VIII, 1863, as amended by the 1967 General Assembly”.

### ACT VIII, 1863: ACT ANENT SALES AND TRANSFERENCE OF PROPERTY

The General Assembly hereby enact and ordain —

1. That all applications for sale or transfer of Church property shall proceed from the Deacons’ Court, with concurrence of the Congregation, and shall have the sanction of the Presbytery of the bounds; and that all such applications, on being received by the Clerks of Assembly, shall be communicated to the Custodier of Title Deeds (or Committee charged with that matter), in order that he (or they) may be prepared to advise the Assembly or its Committee in reference to the application. {amended by Act V, 1967, above}

2. That when a property is to be sold, and the proceeds are forthwith to be applied to another property, to be substituted in lieu thereof, the Custodier of Titles (or Committee) shall be directed to see the transaction carried into effect, and also to see that the title-deeds of the new property are taken in the same terms as those of the old, or in terms of the model trust-deed.

3. When the proceeds of the property to be sold or transferred are not to be immediately applied, they shall be deposited or invested, in the meantime, in name of the General Treasurer of the Free Church, for behoof of the congregation.

### ACT X, 1875: ACT ANENT SALES AND TRANSFERENCE OF PROPERTY

With reference to Act VIII of Assembly 1863, the General Assembly enact and ordain that in cases of Sales and Transference of Property, it shall be the duty of the Custodier of Titles to re-

port annually to the General Assembly how far in each particular case the provisions of the said Act and the instructions of the General Assembly have been observed. {amended by Act V, 1967, above}

ACT II, 1968: ACT ANENT TITLES TO, AND SALE OF CONGREGATIONAL PROPERTY

The General Assembly note that certain Titles detailed in the Register are missing in whole or in part. They instruct the Committee to investigate the whereabouts of these documents so that, as far as possible, all essential documents may be held in the care of the Committee.

The General Assembly remind Congregations that, where the authority of the Assembly to the Sale of a property is required, any negotiations prior to the granting of such authority is *ultra vires*. The General Assembly warn Congregations that property should not be advertised for sale, nor should Missives of Sale be entered into, before the authority of the General Assembly, where required, has been obtained.

ACT II, 1982: ACT ANENT PROCEDURE IN SALES OF PROPERTY

The General Assembly direct that when Petitions for sale with proposed findings are included in the Committee's submissions to the Assembly or its Commission, the Presbytery concerned shall appoint one of their number to answer such questions bearing on the local situation as members of Assembly or Commission may propose.

ACT II, 1991: ACT ANENT OCCUPATION OF MANSES

The General Assembly endorse the principle that, in holding a charge, a minister is obliged to occupy the manse. They further ordain that authorisation for the sale of a manse on the grounds that a minister may wish to occupy his own house be refused.

(2) Trustees

ACT II, 1905: ACT ANENT TRUSTEES

Whereas in the action, Bannatyne, and Others, against Lord Overtoun, and Others, it was, on 22nd October 1904, found and declared by Interlocutor of the Second Division of the Court of Session applying the Judgment of the House of Lords, as follows:— (1) That the association or body of Christians calling themselves the United Free Church of Scotland has no right, title, or interest in any part of the whole lands, properties, sums of money, and others which stood vested as at the 30th day of October 1900 in the Right Honourable John Campbell Baron Overtoun, and Others, general trustees of the Free Church of Scotland: And (2) that the appellants (pursuers) and those adhering to and lawfully associated with them, conform to the constitution of the Free Church of Scotland, are, and lawfully represent the said Free Church of Scotland, and are entitled to have the whole of said lands, property, and funds applied according to the terms of the trust upon which they are respectively held for behoof of themselves and those so adhering to, and associated with them and their successors, as constituting the true and lawful Free Church of Scotland, and that the defenders, the said Right Honourable John Campbell Baron Overtoun, and Others, as general trustees aforesaid, or the defenders second enumerated, or those of the defenders in whose hands, or under whose control the said lands, property, and funds, may be for the time being, are bound to hold and apply the same (subject always to the trusts aftermentioned)

for behoof of the pursuers, and those adhering to, and associated with them as aforesaid, and subject to the lawful orders of the General Assembly of the said Free Church of Scotland or its duly appointed commission for the time being, and, in particular, that they are bound to denude themselves of the whole of said lands, property, and funds in favour of Major Robert Greig, Shortwoodend, Moffat; Robert Reid, Esq., of Killellan, Campbeltown; James Coltart, Esq., Hawkhill, Bearsden, Glasgow; John MacDonald, Esq., 12 Rupert Street, Glasgow; Charles MacKessock, Esq., Wester Mains of Alves, Forres; John Pursell, Esq., Rhynd Lodge, Seafield, Leith (three being a quorum), as General Trustees of the Free Church of Scotland, and their successors in office, but subject always to the trusts upon which the said lands, property, and funds, were respectively held by the said defenders for behoof of the Free Church of Scotland as at 30th October 1900: AND WHEREAS in pursuance of said Interlocutor the said Right Honourable John Campbell Baron Overtoun, and others, as General Trustees aforesaid, did grant in favour of the said Major Robert Greig, Robert Reid, James Coltart, John MacDonald, Charles MacKessock, and John Pursell, as General Trustees foresaid, and their successors in office, a disposition of certain lands, property, and funds: AND WHEREAS doubts have been suggested as to the position as Trustees of the said Right Honourable John Campbell Baron Overtoun, and Others, and it is expedient that all such doubts should be settled: THEREFORE this Assembly enacts and declares that the said Right Honourable John Campbell Baron Overtoun, and Others, who acted as General Trustees of the Free Church of Scotland at said 30th October 1900, and who have since adhered to, and associated themselves with, the said United Free Church of Scotland, are no longer General Trustees acting under the authority of this Church; and the General Assembly hereby declares that the whole of said lands, property, and funds, which had been vested in the said Right Honourable John Campbell and Others, as aforesaid, at said date, and such further lands, property, and funds, as may have accrued to this Church, or any of its schemes from said 30th October 1900, or which may hereafter accrue to the same, are, and shall henceforth be held only by the said Major Robert Greig, Robert Reid, James Coltart, John MacDonald, Charles MacKessock, and John Pursell, and their successors in office, as General Trustees, acting under the various relative Acts of Assembly of this Church, subject always to the trusts upon which said lands, property, and funds, were respectively held for behoof of the Free Church of Scotland, as at said 30th October 1900.

ACT II, 1979: ACT ANENT GENERAL TRUSTEES — GENERAL CONSOLIDATING ACT

1. The General Assembly receive and adopt the Report and thank the Committee especially the Convener.
2. The General Assembly in order to consolidate and update legislation anent the General Trustees enact as follows:—

APPOINTMENT OF TRUSTEES

3. The General Assembly direct that additional Trustees shall be elected as required on the recommendation of the existing Trustees, who shall submit nominations in their Annual Report to the Assembly. Nominees for election shall be ministers or elders of the Free Church of Scotland, and in appointing due regard shall be had to each nominee's experience of work on the Church's Standing Committees and any special business qualifications he may have. The number of ministers who are Trustees at any one time shall not exceed three.

GENERAL TRUSTEES NOMINEES

4. The General Assembly repeal Act IV, 1926 and substitute for it the following:—  
The General Assembly approve the continuance of the Company known as The Free Church of Scotland General Trustees Nominees, for the purpose of holding the Church's securities and investments, in terms of the Memorandum and Articles of Association, printed as an Appendix,

following page 304 of 1926 Acts of Assembly; and authorise that, subject to Assembly legislation, such securities and investments may be held to the order of The Free Church of Scotland General Trustees Nominees through the Nominee Company of an investment adviser. The Assembly direct the General Trustees and others holding securities for behoof of the Church to transfer the same, where appropriate, to the Company.

#### TENURE OF OFFICE

5. The General Assembly direct that the General Trustees shall hold office in terms of Assembly legislation and such civil legislation as may be applicable for the time being to Trustees in Scotland, and, in the case of The Free Church of Scotland General Trustees Nominees, to Companies in Scotland. They shall continue in office as long as they remain ministers or elders of the Free Church of Scotland, or until their resignation has been accepted, or as long as civil legislation may permit, provided always that Trustees appointed after the close of 1979 General Assembly be required to retire on attaining the age of 70 years. Further, the General Assembly amend Act IX, 1949 by the addendum: This Act shall not apply in the case of Trustees who become members of the Free Church of Scotland General Trustees Nominees subsequent to the close of 1979 General Assembly.

#### FUNCTIONS

6. The General Assembly repeal the finding of 1852 General Assembly regarding money left or donated to Committees and substitute therefor the following:

7. The General Assembly direct the several Committees to whom money or securities may be left or donated, and the income to be applied to the work of the particular Committee, to invest the same not in their own names but in the names of the General Trustees or their Nominees, declaring that the General Treasurer is authorised to sign receipts of discharges for all such monies or donations in the name of the General Trustees or such Committees and to relieve the payers or donors thereof of any obligation to see to the application of such monies or donations. The Assembly instruct all Committees holding any property appropriated to general purposes to transfer the same as soon as circumstances will permit to the General Trustees; and the General Trustees shall lay before the Assembly each year a statement setting forth not only funds that have been invested in the course of the past year but also the whole funds under their control at that time.

8. The General Assembly, in accordance with the Churches (Scotland) Act 1905, Commission Order 661, affirm that the General Trustees shall hold any property bequeathed or conveyed to them for behoof of the Free Church of Scotland, and shall as regards the management and disposal of the said property, be subject to the direction of the General Assembly of the Free Church of Scotland for the time being, and shall subject to such legislation such power to sell, or otherwise dispose of or burden with debt the said property, provided always that any proceeds arising from the exercise of the said powers, or any of them, shall be held for and applied and appropriated to the Free Church of Scotland; and that the purchasers from or lenders to the said Trustees shall not be entitled to enquire into, and shall have no responsibility in regard to the application of the money paid by them to the said Trustees.

9. The General Assembly empower the General Trustees, subject to Assembly legislation, to administer the funds and heritable property held by them for behoof of the Free Church of Scotland, and in particular authorise them to deal with and dispose of such applications for loans from capital held by them as may be transmitted to them through the Finance, Law and Advisory Committee.

10. The General Assembly direct the General Trustees to institute a register of all heritable properties held in their name; this register to contain all useful data as to location, condition and value; and to be brought up to date annually.

11. The General Assembly instruct the General Trustees to open and maintain a Let Property Account (Revenue and Capital) in respect of properties held by the Church and leased to tenants, such account to contain all relevant data.

12. The General Assembly further direct the General Trustees to prepare and maintain an up-to-date record of pictures, busts and objects of historic interest referred to in Churches (Scotland) Act 1905, Commission Order 1261, together with such pictures and objects as have since come or may come to be held by the Trustees as property of the Church and are presently located, or may be located within the Mound Buildings. The record shall specify the location of each item and note any change of location that may be made from time to time. The record shall also include reference to the Library of the Free Church College, as indicated in Order 1263 of the said Commission, and subsequently augmented by donations or purchases of books. The General Assembly instruct the Senatus to inform the Trustees for the purposes of the record of each new donation of historic interest that may be made to the College, and the Senate of any such object of interest located in the part of the Mound Buildings occupied by the College, or to dispose of any portion of the College Library.

13. The General Assembly repeal Act X, 1975, and substitute for it the following:—

(a) The General Trustees shall in regard to the retention, realisation, investment and management of the assets of the Church together with those Special Trusts where the General Assembly has appropriate authority (hereinafter called the Trust Estate) have full power to invest the assets of the Trust Estate or any part thereof in any of the Public Funds or Stocks or Government Securities of any Government or State or in Funds or Securities guaranteed by the Government of Great Britain or in the Debentures, Debenture Stock, Preference Stock or Ordinary Stock or Shares fully paid or otherwise of any Company, Corporation, Bank or Public Body in the United Kingdom or any other Country or in any unit, sub-unit, or share in a Unit Trust Scheme, whether within the United Kingdom or abroad, as defined by Section 26(1) of the Prevention of Fraud (Investments) Act 1958 or any Statutory modification or re-enactment thereof or in the Bonds, Registered or Bearer, Debentures, Receipts, Obligations or Notes of any Company, Corporation, Community or Institution in the United Kingdom or in any other Country authorised to borrow or receive money on Debentures or Deposit or on real heritable security, or in the purchase of real or heritable property or in feu duties and ground annuals and perpetual ground rents secured over heritable or real property in the United Kingdom and to deposit the said assets with any Local Authority, Bank, Investment Company, Building Society or any other Company, Corporation, Community or Institution authorised to receive money on deposit;

(b) The General Trustees shall have full power to appoint a recognised investment adviser to manage the investment of the Trust Estate or any part or parts thereof and to remunerate such investment adviser;

(c) The Investments of the Trust Estate, shall be held in name of The Free Church of Scotland General Trustees' Nominees or to its order by or through any Nominee Company of the appointed investment adviser;

(d) The General Trustees shall have full power to arrange for the investments representing the Trust Estate to be managed as an unauthorised unit trust or similar scheme providing for each beneficial interest therein to receive a share of the capital and income of the whole Trust Estate determined in an equitable manner;

(e) The General Trustees of the Free Church of Scotland and The Free Church of Scotland General Trustees' Nominees are hereby indemnified for all claims for loss sustained by the Trust

Estate, through investments, as long as such investments are made within the authority conferred by this Ordinance.

(f) The Finding of the Commission of Assembly of 19th November 1947 is hereby repealed.

14. The General Assembly appoint a Standing Committee on Church Building Maintenance and Custody of Titles comprised of the personnel of the General Trustees along with the Clerks of Presbyteries which are not otherwise represented by the personnel of the Trustees, of which the Clerk of Assembly shall be Clerk.

They direct that the responsibility for negotiations with congregations regarding custody, use or transfer of titles be that of the Clerk of the Assembly as Clerk of the Committee on Church Buildings Maintenance and Custody of Titles to whom all correspondence on these topics is to be directed.

They further direct that the Committee on Church Buildings, Maintenance and Custody of Titles shall be concerned with legal aspects of tenure or ownership of congregational property, and in particular, the appointment and replacement of local Trustees.

15. The General Assembly draw the attention of local Trustees to the following requirements of the Model Trust Deed:—

(a) Congregational Trustees are accountable to the General Trustees for the balance of the proceeds of a sale of a church property for the relief of debt; and

(b) When such a sale is considered an offer shall be made in the first instance to the General Trustees.

16. The General Assembly approve that the General Trustees be *ex officio* members of the Finance, Law and Advisory Committee, which Committee shall be responsible for approving and directing the application of revenue in accordance with Assembly legislation. They instruct that all applications involving loans from capital be channelled through the Finance, Law and Advisory Committee, who shall transmit such applications with any appropriate comment to the General Trustees for consideration and disposal. They also instruct that with regard to surplus cash in hand (revenue or capital) the General Treasurer shall consult with the Convener of the Finance, Law and Advisory Committee, and, if so advised, shall transfer to the General Trustees for investment such sums as seem reasonable in the circumstances.

17. The General Assembly direct that the General Trustees shall meet as required to transact business other than business relating to the Trust Estate, and shall have power to appoint their own Chairman. Three shall be a quorum and the General Treasurer shall be Secretary. When required to transact business in connection with the Trust Estate the General Trustees shall meet in their capacity as the General Trustees Nominees' Company and only business relevant to the Trust Estate shall be transacted at such a meeting.

18. The General Assembly remind the General Trustees of their responsibility with regard to the maintenance of the Assembly Hall as laid down in Act X, 1978, and the extent of their obligation to provide housing for newly appointed Professors as set forth in Act XIX, 1978.

19. The General Assembly repeal (in addition to Finding of Assembly, 1st June 1852, Finding of Commission of Assembly, 19th November 1947, Acts, IV, 1926 and X, 1975, all mentioned heretofore), Findings 3, 4 and 5, p.53, Acts 1978 and Act XIV, 1978, paragraphs. 2, 3, 4.

20. The General Assembly discharge the Committee.