

# Paper P

Powers in pre-Union trusts

Law and Polity Advisory Group

Church 2014  
**United**  
Church **Reformed**  
**Church** Church 2014



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## Law and Polity Advisory Group: Powers in pre-Union trusts

### Basic Information

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<b>Action required</b>	Decision
<b>Draft resolution(s)</b>	<b>See end of paper</b>
<b>Alternative options to consider, if any</b>	

### Summary of Content

<b>Subject and aim(s)</b>	Powers in pre-Union Trusts (England, Wales and the Islands)
<b>Main points</b>	Trust deeds predating the 1972 and 1981 Unions forming the United Reformed Church gave powers to certain organs and officers of the predecessor Churches. Sections of the two Acts facilitating the Unions allowed the General Assembly to determine organs or officers of the United Reformed Church which were to “inherit” such powers, but this has never been done.
<b>Previous relevant documents</b>	
<b>Consultation has taken place with...</b>	

### Summary of Impact

<b>Financial</b>	None
<b>External (e.g. ecumenical)</b>	None

# Powers in pre-Union trusts

1. Most property held for the United Reformed Church serves the church at the local level. Church buildings (here called chapels) and manses are the best-known examples. But from time to time land has been given or acquired to serve the denomination as a whole. This was true also of our predecessor denominations before the United Reformed Church came into being.
2. When the United Reformed Church Act 1972 varied the trusts of former Presbyterian and Congregational assets to make them available to serve the United Reformed Church, it dealt with such assets under five main categories. In the United Reformed Church Act 1981 a similar approach was taken to former local Churches of Christ assets.

Category	Type of asset	Act of 1972	Act of 1981
A	Chapels, church halls, mission halls and manses of local churches	ss.8(1) and (2), and Sch 2	ss.6(1) and (2), and Sch 2
B	Other local church land	ss.8(1) and (3)	ss.6(1) and (3)
C	Other local church assets	s.9	s.7
D	Denominational property – Presbyterian	s.11	
E	Denominational property – Congregational	s.12	
F	Denominational property – Churches of Christ		[applied by Scheme of the Charity Commissioners]

3. Section 8(2), applicable to property category A, replaced altogether the operative provisions of the trust deeds governing the property to which it applied. In their place, came the well-known provisions of the Acts' Second Schedules: Part II for manses, Part I for everything else. In relation to this category of property, there is no need to look beyond the provisions of the relevant Schedule, which distribute necessary decision-making between Trustees, Church Meeting and Synod.
4. However the other sections made very few changes to existing trusts, apart from substituting United Reformed Church purposes for those of the predecessor denomination. So it remains important to consider what the pre-Union trust instrument governing property in categories B-F (or, if there was no written instrument, the unwritten trusts implied by the circumstances of its acquisition) said.

5. The difficulty here is that, in some cases, pre-Union trusts conferred powers of direction, powers of nomination or appointment, and the right to give or withhold consent to a transaction, on organs of the predecessor denomination (for example on the Board of Managers of a Presbyterian congregation, a Presbytery, a special meeting of a Congregational church, or the Annual Conference of the Churches of Christ). Since such organs no longer exist, there is a question who can now exercise their powers.

6. No difficulty has been encountered in practice, and there has been a general assumption that “equivalent councils” under the Structure of the United Reformed Church can exercise the powers. But this is not strictly true. One reason is that the “equivalent councils” need to be expressly determined; otherwise it would be uncertain whether church meeting or elders’ meeting should replace earlier local organs. It would previously have been uncertain whether synod or district council should inherit the powers of a Presbytery. A deeper reason is that, although the Structure is part of our denominational constitution, setting out the terms on which members of the United Reformed Church past and present have agreed to order our common life, the agreement of church members is not enough to alter the terms on which the owners of assets gave them at an earlier date. That is why the United Reformed Church Acts were necessary; so that parliament could make changes which the authorities of the uniting churches themselves could not.

7. The authors of the Unions foresaw this difficulty and secured provisions in the United Reformed Church Acts to transfer trust deed powers in relation to property in categories B-E above. (In relation to category F any provision for succession to the predecessor denomination’s powers should have been made by the Charity Commission Scheme.)

8. s. 18(1) in the Act of 1972 and s.10(1) in the Act of 1981 were designed to resolve difficulties arising “Where immediately before the date of formation/unification any power with respect to any trust or any power of nomination is or is to be vested in any association dissolved by [the Act]”.

9. These sections did not say where such powers should go, but left that to the General Assembly to decide. “Any such power shall (in the case of a power previously vested ... in an association) vest in such person or body of persons as the General Assembly shall from time to time appoint”.

10. The General Assembly has, however, never exercised this right in general terms. The Acts permitted it to delegate the right, and it did delegate its right under the 1972 Act to its Executive Committee (now Mission Council); but the Committee never exercised the right either. The right under the 1981 Act was never delegated.

11. The resolution in this paper proposes that the right under both Acts should be exercised by Assembly itself, to prevent any question as to powers in pre-Union trusts arising in the future. It is suggested that decisions taken before the Union at the local level should pass to the church meeting, decisions at intermediate levels to the synod and decisions at the denominational level to Mission Council (unless it should happen that a need arises for an urgent decision when a meeting of Assembly is closer than a Mission Council meeting). The resolution is carefully worded to cover the possibility that a local church created by a Union may since have merged with others or ceased to exist, and to cover two different ways in which pre-Union Presbyterian deeds may have referred to a Presbytery.

12. The choice of the church meeting to make local decisions, rather than the elders' meeting, mirrors the choice made in the Second Schedules to the Acts regarding chapels, halls and manses. There too, the powers of direction, consent and appointment are bestowed on the church meeting, but church meetings are called upon to have regard to the recommendations of other councils including the elders' meeting. That exhortation is repeated in the resolution.

13. It is conceivable that a pre-Union trust deed may have conferred powers on some other pre-Union entity (such as a presbytery or denominational committee) not covered by the resolution, creating the necessity for a further exercise of the Assembly's right of appointment to lay uncertainty to rest. It is also conceivable that some amendment of the provisions now proposed may be needed in the light of experience. The resolution therefore also contains a delegation of Assembly's rights to Mission Council for the future.

14. The resolution will not cover property category A above since the Acts' Second Schedules have already made adequate provision for such property. This is stated for the avoidance of any doubt.

15. Section 18 of the 1972 Act extends to the Isle of Man by virtue of the United Reformed Church Act 1972 (Isle of Man) Order 1977, to Guernsey by virtue of the United Reformed Church Act 1972 (Guernsey) Order 1981 and to Jersey by virtue of the United Reformed Church Acts 1972 and 1981 (Jersey) Order 1998. The resolution therefore also covers powers in relation to any property in categories B-E above that may exist in the Islands.

16. Sections 12(1) and (2) of the United Reformed Church Act 2000 make comparable provision in respect of assets formerly held for the Congregational Union of Scotland and its churches, but in that case the power of appointment lies with the Synod of Scotland rather than the General Assembly. The resolution does not therefore refer to the 2000 Act; but if Mission Council agrees to propose the resolution to Assembly, the Law and Polity advisory group will send a copy to the National Synod of Scotland for information, in case it should wish to follow suit.

## Resolution

**Mission Council agrees to forward the following resolution to General Assembly:**

**(1) The General Assembly, in exercise of the powers conferred by s.18(1) of the United Reformed Church Act 1972 and s.10(1) of the United Reformed Church Act 1981, appoints until further notice the councils and other organs of the Church indicated in column 2 below to exercise any powers with respect to trusts and any powers of nomination vested prior to 5 October 1972 (or, as the case may be, prior to 26 September 1981) in the members, courts and other organs of dissolved associations indicated in column 1 below.**

**(2) In exercising any power vested in it by this resolution, a church meeting should act with due regard to any recommendations of the elders' meeting or of other councils of the United Reformed Church exercising oversight over the local church concerned.**

**(3) For the avoidance of doubt, this appointment does not affect trusts or powers in relation to property governed by s. 8(2) of and Schedule 2 to the Act of 1972, or by s. 6(2) of and Schedule 2 to the Act of 1981, or to property in Scotland.**

**(4) In exercise of the power conferred by s.18(2) of the Act of 1972 and s.10(2) of the Act of 1981, the Assembly delegates any further exercise that may be necessary of its powers under s.18(1) and s.10(1) respectively (including any amendment of the provision now made) to Mission Council. This is in substitution for the delegation made to the Executive Committee by the Uniting Assembly of 1972.**

<b>Power vested before the date of formation/unification in:</b>	<b>To vest in:</b>
The Session, Diaconate, Deacons' Court or Board of Managers of a uniting congregation	The church meeting of the corresponding local church, or of any local church formed by its union with other local churches since the date of formation; or, if the local church has ceased to exist since the date of formation, the synod on which it was last represented
The members or deacons of a uniting church	
A presbytery of the Presbyterian Church of England, defined in the relevant trust instrument by jurisdiction over a particular uniting congregation	The synod on which the local church corresponding to that uniting congregation, or any local church formed by its union with other local churches since the date of formation, is for the time being represented; or, if the local church has ceased to exist since the date of formation, the synod on which it was last represented
A presbytery of the Presbyterian Church of England, defined in the relevant trust instrument only by geographical name	The synod of the current province or nation of the United Reformed Church within which the bounds of the former presbytery (or the greater part thereof) lay; to be determined in case of doubt by a ruling of a Moderator of the Assembly on the advice of the clerk, which shall be final
A county Congregational Union	The synod of the current province or nation of the United Reformed Church within which the area of the former Union (or the greater part thereof) lay; to be determined in case of doubt by a Moderator of the Assembly on the advice of the clerk, which shall be final
The General Assembly (or, prior to the adoption of that title, the Synod) of the Presbyterian Church of England	Mission Council (or the General Assembly if, whilst in session, it elects to exercise the power)
The Assembly of the Congregational Union or of the Congregational Church of England and Wales	
The Annual Conference of the Re-formed Association of Churches of Christ	