

# Blue Pages

## Practical Information for Churches

Issue 87 July 2007

### ACCOUNTS

In some copies of the February 2007 issue of *Blue Pages*, we inadvertently referred to the expression “income and expenditure accounting method” in the third paragraph of the opening item. This should have read “receipts and payments accounting method.”

### ASBESTOS REGULATIONS

The Control of Asbestos Regulations 2006 came into force on 13 November 2006. They bring together three previous sets of Regulations concerning asbestos. A good summary of what they involve can be found on the web site of the Health and Safety Executive. Type *Asbestos Regulations* into a search engine, and one of the web sites offered will be that of the HSE. It helpfully reminds those who manage premises that although asbestos materials which are in good condition may be left in place, its presence must be recorded, monitored and managed to ensure it is not disturbed.

More helpful information can be found by clicking on the hyperlink *The duty to manage* in the asbestos section of the HSE web site.

### ASSURED SHORT-HOLD TENANCIES

FIEC Limited has amended its “model” agreement applicable to assured short-hold tenancies, following the new legal requirement from 5 April 2007 that any deposits paid by tenants under AST agreements must be held independently, rather than by landlords. For tenancies in which it is itself involved, FIEC Limited is using a scheme provided by Computershare Investor Services Limited (The Deposit Protection Service Limited). Tenancies entered into before 5 April 2007 are not affected. Further information is available from FIEC Limited on 01858 411569.

### BURIAL GROUNDS

The government has decided against making any major changes to the way in which burial grounds are provided, owned and regulated in future. This means that there will continue to be the present mixture of local authority, church and private ownership, and the owners will bear the responsibility for deciding their own burial policy, criteria and scale of charges, and for safety and maintenance. There will be no external authority to police them.

Expected standards will be based on guidelines, rather than legislation, and there will be no additional public money available to assist burial ground owners in fulfilling their duties, or improving the facilities offered. Owners will therefore need to fund their services and responsibilities from fees, or from private resources, or, in the case of civic burial grounds, from business rate and Council Tax revenue. Independent churches with burial grounds will have to continue to meet the cost of burial ground upkeep from church funds, unless there are designated endowment funds in place for that purpose.

Although the re-use of existing graves will become permissible in future, burial ground owners will not be compelled to offer burials in existing graves, and neither will the families of deceased persons be obliged to accept new burials in existing graves. However, owners of burial grounds will not be obliged to provide burial space for everyone who applies, so in areas where there is pressure on burial space, such as in the London area, burials may not be possible in public cemeteries as locally as families may wish. In view of the fact that there will be no additional public funding, the charges imposed by local authorities, and by burial providers in the private sector, are likely to increase significantly over the next two or three years.

This would be a good time for churches with burial grounds to review their burial criteria and maintenance arrangements. In some cases aspects of burial policy will be set out in governing documents, but where the church is free to determine its policies, a new review would be appropriate. The government's 27 pages of proposals, entitled *Burial Law and Policy in the 21<sup>st</sup> Century – the Way Forward* can be downloaded free of charge from the Ministry of Justice web site, [www.justice.gov.uk/publications/buriallaw050607.htm](http://www.justice.gov.uk/publications/buriallaw050607.htm) .

## CHARITIES ACT 2006

The following are some of the provisions of the Charities Act 2006 which will affect churches:

- **Accounts examination arrangements**  
Accounts need to be professionally audited if the charity's annual income exceeds £500,000; or if it is an unincorporated association with an annual income in excess of £100,000 and assets of £2.8 million; or if it is a charitable company with assets in excess of £2.8 million. Charities which are unincorporated associations must have their accounts independently examined if annual income is between £10,000 and £500,000. If the income is between £250,000 and £500,000 the independent examiner must have an appropriate accountancy qualification.
- **The Public Benefit Test** required by the Act is due to be introduced early in 2008. Every organisation, including churches, applying to become a registered charity, must pass this Test. A Consultation has recently taken place on the details of how the Charity Commission should apply the Public Benefit Test. The outcome of the Consultation may not be known for several months. Readers of *Blue Pages* will be kept informed.
- **Charitable Incorporated Organisation.** The Charities Act introduces a new type of charity – a charitable incorporated organisation (CIO) – a half-way house towards being a company. However we do not recommend that churches should become companies or CIOs, as the provisions of the Companies Act, and the parallels which will carry over to the CIOs (though CIOs will not have to register as companies) do not match very closely to the kind of church government found in the New Testament. An unincorporated association is a much closer match.
- **Compulsory registration.** Prior to the Charities Act 2006, FIEC churches were “excepted” charities, and not required to register. However, under the provisions of the new Act, “excepted” status is being abolished, and all

charities with an annual income in excess of £5,000 will, by degrees, be required to register. The first band of excepted charities obliged to register will be those with an annual gross income of £100,000 or more, but no date for this has yet been officially announced. The most recent unofficial date being mentioned is April 2008, but the status of the date – i.e. whether it is a deadline or a target – is not at all clear. If a church untypically goes over the £100,000 threshold in the last completed financial year prior to the date for compulsory registration – perhaps because of a building project in that year – it will be required to register. Churches with under £100,000 gross income will not have to register for at least five years, and probably longer, as a review of the working of the 2006 Act, due after five years, must take place before the thresholds are changed.

- **Remuneration of charity trustees.** This is made simpler by the Act, as the written permission of the Charity Commission is no longer required. However, strict rules are still applicable. Pastors are almost always managing trustees of a church, but if the rules in the Act are met, remuneration of pastors from church funds will be lawful. If they do not do so already, a church's governing documents will need to be amended to authorise payments to trustees.

*The full text of the Charities Act 2006 can be downloaded from the government's OPSI (Office of Public Sector Information) web site. Enter Charities Act 2006 into your search engine, and the OPSI text version of the Act will be the top web site shown.*

## CHILD DAY-CARE REGISTRATION

Children's activities held in churches are classed as day care provision, and where these involve children under eight years of age they are regulated by Ofsted.

However, churches do not need to be registered with Ofsted if the following two criteria apply:

- The activity does not exceed two hours per session in length, irrespective of its frequency
- Any sessions in excess of two hours in length are not held on more than five days in any one period of 12 months

Although there have been many other subsequent changes in legislation and in regulatory arrangements, these criteria, introduced by the Children Act 1989, have not changed.

However churches which have any sessions

exceeding two hours, while not being required to register if these are on five days a year or fewer, must still notify Ofsted in writing that the activities are taking place. This notification is not required for the sessions of two hours or less referred to in the first bullet-point.

Further information is available on the Ofsted web site ([www.ofsted.gov.uk](http://www.ofsted.gov.uk)) under *Guide to registration for day-care providers*.

## **CHILD TAX CREDIT**

Applicants for child tax credit may not be aware that any gifts made under Gift Aid are eligible to be deducted from the salary level on which tax credit assessments are based. This means that a higher level of tax credit is payable where any Gift Aid payments have been deducted.

Those applying will need to obtain form TC825 from the HMRC tax credit line (tel. 0845 300 3900) and this form should then be completed and returned either immediately or with the next annual claim form.

As forms TC825 are not routinely sent out to applicants by the tax credit department, a degree of persistence, albeit accompanied by unremitting courtesy, may be necessary when asking for them.

## **CRB CHECKS [1] -**

### **Circumstances in which CRB checks compulsory**

CRB checks will become compulsory, under the Safeguarding Vulnerable Groups Act 2006, on a date still to be announced. Vulnerable groups include children, the disabled and the elderly. The following has become clear:

- In addition to all workers and helpers, CRB checks will be required on managing trustees of all bodies providing services, whether those trustees are personally involved in any of the relevant activities or not.
- The requirement to be CRB-checked will not apply to anyone already in post on the effective date to be announced
- A separate check will be required if someone works both with the elderly and with children.
- CRB checks for children's work will be the first to be introduced – the others will follow some time later.
- CRB checks are not transferable from one service-provider to another. This means that a CRB check obtained by one organisation cannot be regarded as valid in connection with work with another organisation.

It is not clear yet what will define an activity for or by the elderly as a “vulnerable group.” An activity requiring CRB checks is likely to be defined as one

involving at least one “vulnerable person.” As a “vulnerable person” has provisionally been defined as someone living in sheltered accommodation, requiring or receiving regular care services, or receiving specified benefits, in practice someone in those categories could turn up unannounced at a church activity for the elderly at any time. The only logical response to this is for churches, when the time comes, to ensure that all their workers involved in regular activities with the elderly are CRB-checked.

## **CRB CHECKS [2]**

### **Disclosure identity checks**

The Criminal Records Bureau (CRB) has advised the FIEC that identity checks relating to Disclosure applications should always include face-to-face verification of the applicant's identity. This is to avoid any possibility of identity fraud being perpetrated. For churches using the FIEC's Disclosure service this means that the identities of all applicants must be verified by the officer(s) nominated by the church to process its Disclosure checks through the FIEC, and that the FIEC is no longer able to verify identities on the basis of documents sent through the post. For more information about the revised procedure this change will involve, please contact Roy Saint or Helen Heath at the FIEC office.

## **EMPLOYMENT PROTECTION OF PASTORS**

Pastors are not employees, but come within an untypical legal category of employment known as “office-holder.” Within that classification they are “ministers of religion.” There are about 50,000 in the UK, and the government is seeking ways of increasing their employment protection, of which they have none guaranteed at present, without resorting to law. For the past four years a Clergy Working Forum has been working with the DTI to devise a suitable framework in which faith groups can establish effective voluntary systems to provide employment protection for their ministers. In March this year faith groups were given six months by the DTI to put together their preferred systems. They must do this by September 2007 and have them in place, and evaluated, within two years of that. FIEC pastors have already been asked to complete a questionnaire, and FIEC churches will be consulted over the next few weeks. The government has left itself the option of legislating if a significant proportion of faith groups, by the end of the two years, cannot or will not deliver an effective voluntary system. Legislation would be an unhealthy and unbiblical step, since it would signal the seizure of a degree of authority by the State over the life of the church.

## **GIFT AID ELIGIBILITY**

As was reported in the February issue of *Blue Pages*, some matters connected with the eligibility for Gift Aid of financial support for missionaries are being discussed with HMRC (formerly Inland Revenue). These matters are still being explored and will be reported in *Blue Pages* when all the outstanding issues have been clarified.

## **GROSS INTEREST ON DEPOSITS**

Churches affiliated to the FIEC, or to another body specified under the 1996 Exempting Regulations, are currently not required to register as charities with the Charity Commission. Although not registered, they have exactly the same privileges and obligations as registered charities, and this includes the entitlement to receive gross interest on deposits in bank and building society accounts.

It has come to our notice that not all banks and building societies appear to be aware that a charity can be a charity without being registered, and as a result the forms they use for the opening of accounts are unanswerable, in that they give the applicant a choice of four boxes to tick, whereas the real answer needs to be indicated by a tick in a fifth box that isn't there.

Churches in this situation should tell the staff dealing with their account application that the church is entitled to charitable status, even though it does not have a charity number. Have with you a copy of the 1996 Regulations, as this will prove it. The Regulations, which only run to a few pages, can be downloaded free of charge from the web site of the Office of Public Sector Information (OPSI). Simply type *The Charities (Exception from Registration) Regulations 1996* into your search engine, and this will take you straight there.

If the bank or building society staff processing your application do not immediately accept the church's charitable status, write to its chief executive enclosing another copy of the 1996 Regulations.

## **MISSIONARIES ENTITLED TO FREE NHS TREATMENT**

It is rare for a law to be introduced solely to grant a privilege, rather than to impose a burden. It is even more unusual for a law to make specific reference to "missionaries." Happily, these rarities came together in the National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2006. From 15 January 2007, missionaries working for UK-based organisations will be entitled to free medical treatment in the UK, irrespective of whether they receive a salary or other funding, or not. Previously free treatment was limited to those who

were abroad for a period of less than five years. Missionaries are the only category granted this extra privilege. Other charity and overseas workers must still satisfy the previous criteria.

## **NO SMOKING IN CHURCHES (nor in most other places)**

Under the Health Act 2006 and the Smoke-free (Signs) Regulations 2007, church premises in England became subject to No Smoking legislation from 1 July 2007. It is now an offence to smoke or allow smoking on all enclosed premises visited by the public, including churches. A specified No Smoking sign must be displayed inside each public entrance to the building. The sign must be at least A5 in size, include the international no-smoking logo (at least 70mm in diameter), and must carry the prescribed words: "No smoking. It is against the law to smoke in these premises." The words "these premises" may be changed to "this church" but we advise churches not to make that change, as the less personalised wording will tend to emphasise that displaying these notices is an imposed legal requirement, rather than implying that churches were ever an environment in which smoking naturally once took place. The required sign can be downloaded from [www.smokefreeengland.co.uk](http://www.smokefreeengland.co.uk) or purchased from office and stationery suppliers. Similar Regulations apply in Scotland, Wales and Northern Ireland, with slight differences. In Northern Ireland the sign can still be A5 but the logo must be 75mm in diameter. In Scotland and Wales the sign must be at least 160mm x 230mm and the logo 85mm in diameter.

## **SEXUAL ORIENTATION REGULATIONS 2007**

These took effect on 30 April 2007. They provide many safeguards and exemptions for churches, but no protection at all for individual Christians. An organisation relating to religion or belief will have the freedom to discriminate on the issue of sexual orientation in respect of membership; participation in activities; the provision of goods, facilities or services; the use and disposal of premises. The grounds for exercising discrimination have to be either in order to "comply with the doctrine of the organisation" or "so as to avoid conflicting with the strongly-held religious convictions of a significant number of the religion's followers. In relation to church property, discrimination can apply to the letting of manses, and the use of premises by outside organisations. It can apply if a church sells part of its site, but not if it sells

all of it. The Regulations do not permit the “religious organisation” exemption for an “education establishment” nor for any service or activity which is paid for out of public funds.

There are different opinions about whether the exemption also applies to the use of church premises by secular organisations (other than publicly-funded ones and education establishments). This is an important point, since it covers whether a church can insist that a secular organisation using church premises abides by its own (the church’s) values. *Blue Pages* strongly believes that a church can insist on this, and that it should do so. The Regulations say: “Nothing in these Regulations shall make it unlawful for an organisation to which this Regulation applies .... to restrict the use ... of premises owned or controlled by the organisation.” This section of the Regulations is about the power of the religious organisations which own or control buildings, and it is they who are being given the authority to “restrict the use.” This must include being able to lay down rules for any casual users of their premises to observe while using the premises.

*Blue Pages* therefore advises churches to do exactly as they did before the Regulations were imposed, except with regard to education establishments and publicly-funded activities. As with all legislation of this type, it is important to hold onto and practise every legal liberty and to resist giving ground voluntarily where the law does not require ground to be given.

Individual Christians are seriously restricted by the Regulations. It will be unlawful for them to let commercially property they own unless they are prepared to let it to a same-sex couple. Christian photographers, printers and confectioners may well want to refuse commissions from same-sex couples in connection with civil partnership ceremonies and celebrations, but any such discrimination will be unlawful, and will risk pursuit in the civil court and the awarding of damages.

## WASTE COLLECTION FROM CHURCHES

For several years we have been engaged in trying to persuade local authorities that it is their legal obligation to provide a free waste collection service from church premises, rather than classifying churches as a business and imposing a charge. We have had some success.

The FIEC has now produced a single side of A4 quoting the extracts from the legislation which clearly indicate that churches are exempt from being charged, and should be treated in the same way as householders.

Being bracketed legally with householders means that, if needed, churches can only expect to be given the maximum number and size of bins which a local authority would provide for a householder. Up to that limit, churches should ask for all that they need, but no more than they need.

Entitlement to this free service does not apply if a church’s waste includes any resulting from the letting of church premises to outside organisations for payment, since it is clearly not the local authority’s duty to collect waste generated by non-church users free of charge while the church receives an income from the letting. However, allowing another evangelical group to use the premises free of charge would not normally compromise entitlement to a free collection, as this would be regarded as a “sympathetic” use, in line with the furtherance of the church’s own purposes and ministry.

If any church would like the A4 summary of the relevant references from waste collection legislation, email a request to [rod@fiec.org.uk](mailto:rod@fiec.org.uk) and it will be sent by return.

## REQUESTS FOR INFORMATION OR ADVICE

The FIEC office handles a steady stream of requests for information and advice on a wide range of subjects, and occasionally it can lose track of inquiries which it has not been able to answer immediately. If anyone is still waiting to hear back with an answer to a request, and nothing appears to be happening, please kindly contact the FIEC office again to remind us.

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