

Blue Pages

Practical Information for Churches

Issue 91 November 2008

CHARITY AND LEGAL ISSUES

Arrangements for registration of FIEC churches

The Charities Act 2006 abolished the category of charity known as an “excepted” charity – one which was in every respect a charity, but was not required to register with the Charity Commission. Thousands of churches came within this category, including all churches affiliated to the FIEC.

The Act only made provision, however, for “excepted” status to be removed in stages, starting with those “excepted” charities which have a gross annual income of £100,000 or more. These, it was subsequently clarified, would need to apply to the Commission for registration by 1 October 2008. About 70 FIEC churches come within this bracket.

In order to spread its own workload, the Commission has created a series of time slots during which it will process applications from particular denominations and church associations. FIEC applications will be processed between January and June 2009. FIEC churches with names beginning with A-K will be processed between January and March, while those beginning L-Z will be registered between April and June. Other church groups will have been allocated other time slots over the next 12 months.

Applicants can use the Commission’s online registration system (OLAR), but some supporting paperwork, such as accounts, governing documents, and some required signatures, may have to be sent by post. The OLAR navigation system explains what additional action is necessary as well as guiding the applicant through the on-line process. The first step for applicants is to go to the Charity Commission web site (www.charity-commission.gov.uk) and click on *Apply to register a Charity* at the top of the Home Page. Churches will only be able to register in this way if they are using approved governing documents, and so we advise all churches to ensure that their documents are in order before they embark on the registration process. Contact the office of FIEC Limited for advice.

Churches with a gross annual income of under £100,000 a year are not required to register immediately and will retain their “excepted” status. A review of the Charities Act 2006 will be carried out some time after November 2011, and one of the matters the review will consider is when and to what extent the £100,000 threshold will be lowered to require further compulsory registrations.

Churches which reach the £100,000 threshold in the meantime will immediately have to register, unless reaching the threshold is the result of an exceptional circumstance, such as a building project or a large unexpected legacy.

Charities and public benefit

Prior to the Charities Act 2006, all churches were presumed to exist for the public benefit. From next year, however, all local churches in England and Wales, whether or not they are registered charities, or belong to an association of churches or not, and whatever their income level, will have to demonstrate that they operate “for the public benefit.”

In practice, churches will encounter the public benefit test at two levels:

- When they apply to be registered as charities, the Charity Commission will assess whether they satisfy the public benefit test.
- Whether registered charities or not, all churches and other charities are required to produce a Trustees’ Annual Report (TAR). Government ministers have power under the Charities Act 1993 to stipulate what the TAR should contain. A statement demonstrating how the charity’s activities fulfil the public benefit requirement will from next year be added to the list of compulsory subjects to be included. Although all charities must produce a TAR, only charities which are registered, and have an annual income of £25,000 or more, will be obliged to send it to the Charity Commission.

The Charity Commission will not measure public benefit by numbers attending, or popular opinion about whether religion is beneficial. The crucial issue is whether the charitable benefits provided are available to the general public, or a significant section of it.

Some churches feared that the public benefit test would oblige them to provide additional activities perceived by the public to be beneficial – for example, playgroups or fitness clubs. Not only is this not necessary, but the Charity Commission has already ruled it out. In guidance published in January 2008, the Commission states:

“Benefits to the public that are not related to an organisation’s aims cannot be used as a way of demonstrating that the aims are for the public benefit. They are not therefore taken into account when assessing public benefit.”

The Commission’s guidelines specifically recognise that public benefit is not always tangible. “Benefits to the public

should be capable of being recognised, identified, defined or described, but that does not mean that they also have to be capable of being quantified or measured. For example, the benefits of ... spiritual contemplation ... can still be identified and experienced, even though not touched or seen.”

Charitable Incorporated Organisations

The Charities Act 2006 introduced the concept of the Charitable Incorporated Organisation, which has been described as a half-way house between an unincorporated association (which most charities are) and a company. A government consultation on how the CIO would work in practice is currently taking place, and closes on 10 December 2008.

Churches or other interested parties wishing to make a submission to the Consultation can download the consultation document from the web site of The Cabinet Office. The easiest way to get to it is to type *Charitable Incorporated Organisation Consultation* into a search engine.

Charitable incorporated organisations will be regulated entirely by the Charity Commission, in contrast to charitable companies, which are accountable both to the Charity Commission and to Companies House.

We do not recommend that the entire entity of a church should become CIOs or companies, but we do recognise that there are sometimes particular circumstances in which it is appropriate for part of a church’s ministry to be placed within a separate company structure. It is expected that CIOs will also be able to be used for this purpose.

ACTION IN RESPONSE TO THE NATIONAL BANKING AND ECONOMIC CRISIS

Is there anywhere safe for our money?

Churches will have been giving attention recently to the implications of the national banking crisis. In particular they will have been asking the question, as good stewards of the financial resources which the Lord has provided: “Where can we safely put our money?”

In respect of the funds it manages on behalf of individual churches, FIEC Limited has sought to act wisely, but without a sense of panic. In practice, the pursuit of this balanced approach has led the Company to spread its own deposits more widely than it would normally have done, but with a sense of proportion.

Many churches bank directly with CAFBank, which is a relatively safe haven for deposits, since CAFBank does not provide services which expose it either to global factors, nor to risks associated with mortgages or loans. However, CAFBank is not a clearing bank and therefore has to make use of other banks and financial institutions. In so doing it is exposed to any risks which affect those other banks. To safeguard its funds as securely as it can, CAFBank’s policy is to spread its deposits across more than 50 of the highest-rated banks.

Churches which open accounts directly with CAFBank will have the first £50,000 of their deposits protected under the Financial Services Compensation Scheme (FSCS). For churches with more than this amount on deposit, the safest course of action is to open accounts in several unconnected banks or building societies. As long as a church only has

one account in each bank, the balance in each account does not exceed £50,000, and the banks are not part of the same group, then all the balances will be protected under the FSCS.

Some banks and building societies do not offer accounts for charities, and some types of account are not covered by the £50,000 guarantee, but many do offer protected accounts, and this is obviously the first question which needs to be asked when “shopping around.”

Churches which want to keep all their funds in one account could consider using one of the Irish banks, several of which have a chain of branches in Britain. All accounts in Irish banks are fully protected under a guarantee issued by the Irish government. This guarantee puts no limit on the size of balances it protects, but it is limited to two years.

The Charity Commission has issued guidance on how the FSCS affects charities and has identified some types of charity which may not be covered by the FSCS.

- a body corporate (which includes a company, industrial and provident society, Royal Charter body, and statutory corporation) which has two or more of the following:
 - ◊ more than £6.5 million turnover;
 - ◊ more than £3.26 million balance sheet total;
 - ◊ more than 50 employees;
- an unincorporated association which has assets of more than £1.4 million;
- collective investment funds (these would include common investment funds).

For the Charity Commission’s full guidance, go to the Home Page on the Commission’s web site and click on *Financial Services Compensation Scheme – what it means for charities*.

Collapse of Electricity4Business

Electricity4Business, the Milton Keynes firm which went into liquidation on 22 October 2008, was fuel supplier to a number of churches. On its collapse its customers were automatically switched to a very high tariff with BG Business. Charges on this tariff may be up to three times the cheapest currently-available rates.

Churches who were customers of E4B are advised to switch immediately to a new supplier. A price comparison web site would be a good place to start searching for a cheaper alternative.

PROPERTY ISSUES

Church premises and business rates

Churches in England and Wales are reminded that if church premises are certified as a place of worship under the Places of Worship Registration Act 1855, then they are exempt from the payment of rates and should not be listed as rateable premises by the Valuation Office Agency (VOA), the executive branch of HMRC which is responsible for the rating system.

If a church is mistakenly paying rates in connection with premises which are a certified place of worship, the procedure for de-listing is to send a letter to the local Valuation Office Agency asking for the premises to be de-

listed and enclosing a copy of the registration certificate. If this certificate has been lost, a new one can be obtained from the General Register Office, Smedley Hydro, Trafalgar Road, Southport PR8 2HH, at no cost.

There are offices of the VOA throughout the country, and if a church does not know which VOA office deals with its local area, go to www.voa.gov.uk and there is a convenient map which will make this clear.

If a church does not know whether its premises are certified as a place of worship, ask the General Register Office. If weddings have ever taken place in the building, it is certain that the church premises are certified as a place of worship, as this is a requirement when church premises are registered for the solemnisation of marriages. Certification as a place of worship is a one-off process. As long as the building is continually occupied by the same church, the certificate never needs to be renewed.

If a church's premises are not yet certified as a place of worship, the church can obtain the necessary application forms, and other procedural information, from the local register office. In order to be certified, the building's primary use must be as a place of religious worship.

VAT and the construction of annexes

The July issue of *Blue Pages* referred to the fact that "annexes" to charitable premises can be zero-rated for VAT, whereas "extensions" are subject to VAT at 17.5%.

The difference between an "annexe" and an "extension" is narrowly defined, and churches need to take great care to ensure that they have correctly understood the situation. Most building projects which churches undertake are correctly defined as "extensions" since they make use of and improve or extend the existing building. An annexe is a separate building, though attached to the existing building. Even then an "annexe" has to satisfy other criteria, such as having its own main entrance, and being capable of being used independently from the main building, in order to be zero-rated for VAT.

A sixth form college in Norfolk recently lost an appeal against the imposition of VAT on what it thought qualified as an "annexe." In this case the Tribunal judged that the "annexe" was not capable of separate independent use, since toilet facilities were only available in the main building.

In another case, a village association in Wales recently lost an appeal against HMRC's decision to charge VAT on the construction of what it thought was a new "annexe" to a village hall. The case hinged on the nature of the access to and between the two buildings.

The Tribunal noted a statement by HMRC that had it been consulted at the planning stage, it might have been possible to agree plans which were acceptable to HMRC as giving rise to an "annexe" and not an "extension." However, the development went ahead without such discussions, and technically the construction plan was found to be an "extension" and not an "annexe."

This case makes it clear that churches contemplating the construction of annexes should consult their local VAT office at an early stage, to see whether early agreement can be reached on a construction plan which HMRC could confirm would define the development as an annexe and therefore qualify for zero-rating.

VAT on construction of parking spaces for the disabled

Under VAT regulations no VAT is payable on the construction of new buildings, nor by charities on the provision of certain facilities for the disabled.

However, we have established that neither of these exemptions extends to the provision of parking spaces for the disabled, and so any work involved in laying out special parking spaces for the disabled will be subject to VAT at the standard rate.

Energy Performance Certificates

From 1 October 2008 the landlord or vendor of any property being rented out or sold in England and Wales is required to issue an energy performance certificate free of charge to the tenant or buyer. In the case of residential property, the EPC will form part of the Home Information Pack (HIP). Certificates can be obtained from an approved surveyor. Similar legislation takes effect in Scotland from 4 January 2009. These new regulations will affect churches which let their manses to commercial tenants. However the new regulations are not retrospective, and do not apply to existing tenancies. The requirement may apply on the renewal of some tenancy agreements with existing tenants.

Although the legislation also applies to non-residential property, places of worship are specifically exempted. However, this exemption may not apply if church premises are sold as a multi-functional building, in which worship and related activities do not constitute the primary use, or if the premises are marketed in anticipation of a change of use.

The Regulations which require the issuing of EPCs are known as The Energy Performance and Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (SI 2007/991). The Scottish equivalent are The Energy Performance of Buildings (Scotland) Regulations 2008. To read the entire legislation, type these titles into a search engine and click on the appropriate OPSI web site.

Plumbing compliance inspections

Churches may not be aware that in England and Wales they have obligations under the Water Supply (Water Fittings) Regulations 1999 or in Scotland under The Water Byelaws 2000 (Scotland) to prevent water contamination and to ensure that all fittings installed since the Regulations took effect comply with current standards. Fittings which pre-date the Regulations can still remain in use, even if they would not meet current standards. However, if they are leaking or carry contamination risks, these deficiencies will need to be remedied.

Under the Regulations, water suppliers have authority to inspect premises, and will therefore require access when they request it. Under the same Regulations, churches undertaking improvements to water systems are required to obtain the approval of the water supplier if they erect new buildings; extend or alter the water system; change the use of premises; or fit one of a list of specified installations. It is advisable, though not a legal requirement, to use an approved plumber from the official list, as approved contractors will be covered by liability insurance.

Further information about the Regulations can be obtained from the Water Regulations Advisory Scheme (www.wras.co.uk). Northern Ireland will shortly be covered by a similar set of Regulations, due to take effect in 2009.

EMPLOYMENT ISSUES

State pensions for pastors and their wives

Under the provisions of the Pensions Act 2007, men and women who reach State pension age on or after 6 April 2010 will only require 30 years of National Insurance contributions in order to be entitled to a full pension. Previously men required 44 years of contributions and women 39.

In view of the significance of this change, all pastors and their wives who are within 10 years of retirement are advised to obtain a pension forecast from the Department of Work and Pensions. A forecast will reveal whether the applicant is on course to have made sufficient contributions to qualify for a maximum pension.

If the forecast reveals that either a pastor or his wife will fall short of the contribution level required to qualify for maximum pension entitlement, the DWP will advise the applicant whether he or she is eligible to buy up any missing years (maximum of six) to qualify for a full or higher entitlement. It is worth considering this, since the value in enhanced pension of buying up missing years is in many cases much greater than currently can be achieved by putting the same amount of money into a private pension arrangement or into a bank or building society account to earn interest.

Many pastors' wives in particular may not have undertaken paid work during some periods of their husband's ministry, and therefore may not have full contributions.

To find out how to apply for a pension forecast, go to www.thepensionerservice.gov.uk/state-pension/forecast/home.asp

Employing a pastor's wife

Some churches employ the wife of a pastor for a number of hours per week. In some cases, the money she is paid is part of the salary of the pastor, but paid to his wife in order to reduce tax and National Insurance liabilities. Other churches do not reduce the pastor's salary, but pay his wife additionally for work she undertakes. Both approaches are legitimate, as long as the wife does undertake the work for which she is paid, and the hourly rate involved is comparable with what is paid by other employers for the kind of work undertaken.

However, if the pastor's wife is paid, her salary must be paid to her directly, and she must have her own written particulars of employment (often described as a "contract" of employment). It should also be known and approved by the church that she is being employed in this way.

National Minimum Wage

From 1 October 2008 the national minimum wage is £5.73 per hour for all workers aged 22 and over; £4.77 for workers aged 18-21; and £3.53 for workers aged 16-17.

Statutory Sick Pay

In the current tax year, Statutory Sick Pay is payable at £75.40 a week for up to 28 weeks to a qualifying employee who falls sick and who normally earns at least £90 per week.

Some of the money paid by an employer, including churches, is recoverable. To discover the qualifying criteria and the method for recovering SSP, type "Statutory Sick Pay" into a search engine, and a number of useful web sites will appear. Two of the most helpful are *DWP – Services and Benefits – Statutory Sick Pay (DWP)* and *H M Revenue and Customs: What to do if your employee is sick*.

Equal Opportunities Policy

For various reasons some churches have felt the need to adopt an "equal opportunities policy," and often wonder where they can find one which takes account of all current legislation, while remaining faithful to biblical principles.

Although the FIEC does not assume that all churches need a policy of this kind, it is aware of the inadequacy of some policies available from other sources, and has therefore drawn up a policy which is now available to churches.

FINANCIAL ISSUES

Gift Aid claims

Following the change in the income tax rate from 6 April 2008, claims for Gift Aid in respect of gifts made since that date need to be based on the new 20p tax rate. New forms issued by HMRC make the required calculations clear.

When the claim is made on the basis of the new lower tax rate, HMRC will automatically send an additional 3.2p – known as transitional relief - for every qualifying £1 of Gift Aid donation. This means that charities will receive the same amount of additional income as they would have done had the tax rate not been reduced.

Those who make Gift Aid claims on behalf of churches will need to ensure that they claim for gifts received before 6 April 2008 separately from gifts received on or after that date. Gift Aid in respect of gifts made prior to 6 April 2008 needs to be calculated on the basis of the former tax rate of 22p.

The government has promised to pay charities the additional 3.2p of transitional relief until 5 April 2011. There is no guarantee that the payment will continue after that date.

HMRC has recently published a 'Gift Aid Toolkit' to help charities operate their Gift Aid procedures. This is available free on a CD Rom obtainable from the HMRC charities helpline on 0845 302 0203 (8.00am to 5.00pm Monday to Friday).

Charities Act financial thresholds

Following a consultation earlier this year, the government has announced increases in some of the financial thresholds which determine the legal obligations of charities under the Charities Act 2006.

The following are the main thresholds which affect churches:-

For those which are registered charities:

- The income threshold at which it becomes obligatory to submit annual accounts to the Charity

Commission is to be increased from £10,000 to £25,000.

- The income threshold at which it becomes obligatory to send a Trustees' Annual Report to the Charity Commission is to be increased from £10,000 to £25,000.
- The £10,000 threshold at which it becomes obligatory to make an Annual Return to the Commission is to remain the same.
- The £10,000 threshold at which it becomes obligatory to state on certain documents that the organisation is a registered charity is to remain the same.

For all churches and other charities, whether registered or not:

- The income threshold at which it becomes obligatory to produce annual accounts on an accruals basis is to be increased from £100,000 to £250,000.
- The income threshold at which it becomes obligatory to subject annual accounts to Independent examination is to be increased from £10,000 to £25,000.
- The income threshold at which the annual accounts of charities must be subject to a full audit is to remain at £500,000.

Other points to note:

- The £5,000 threshold at which a charity (other than an excepted charity) must be registered with the Charity Commission is to remain the same.
- All registered charities will continue to be obliged to produce annual accounts and a Trustees' Annual Report, even though those charities with an income of under £25,000 will not be required to send these to the Charity Commission.

The new thresholds will come into effect for account years starting in or after April 2009.

Charity Commission advice on the funding of special projects

Following an inquiry [see note below] into complaints about the way in which a particular charity handled the financing of a special project, the Charity Commission has issued advice on special appeals which will have implications for many charities, including churches.

The advice is as follows:

- (a) When embarking on special appeals for a particular purpose, the trustees should make it clear at the outset what will happen to the money if it proves to be insufficient to go ahead with the project; and what will happen to the surplus if more is donated to the project than is required.
- (b) Trustees can consider adopting an approach offered by the Charities Act 2006. Donors can be told at the outset that if their donation cannot be used for the project or is not needed for the project, it will be used for another purpose unless donors sign a declaration indicating that they would like a refund. In those circumstances, trustees would only have to offer refunds to donors who signed declarations, and the Charity Commission would approve a scheme in connection with the remaining money which was not covered by declarations.
- (c) Any special appeal should have a time limit on it, so that everyone would know when it would be judged whether the project could go ahead or not. Without this deadline, it would be possible for a special fund to remain in

being, without the project ever going ahead, and without any donations ever being returned to the donors.

[Note: This was an inquiry under Section 8 of the Charities Act 1993 as amended by the Charities Act 2006, into Greater Life Foundation and Greater Life Trust Foundation, published on 30 July 2008].

Shorter deadlines for company accounts

Churches which have turned themselves into companies, or which have established companies to undertake a specific ministry or trading activity of the church, will need to be aware of two new requirements applicable from 2008.

Under the provisions of the Companies Act 2006, companies must from April 2008 produce their annual accounts within nine months of the end of the financial year, rather than 10. This requirement applies to financial years beginning in or after April 2008.

From 1 October 2008 there are new requirements under the Companies (Trading Disclosures) Regulations 2008 to disclose information about the Company on formal stationery and web sites.

MISCELLANEOUS LEGISLATION AND PROCEDURES

Refusing admission and dealing with disturbances

In connection with the requirement for churches to show that they operate for the public benefit (see the item headed *Charities and Public Benefit*), the question has been asked whether churches are permitted to refuse admission to a member of the public, or to remove someone who is already on the premises.

The answer is 'yes' in both cases. The public benefit requirement is about establishing whether a charity exists for the general benefit of the public, or a significant section of the public. It was never intended to bestow rights of admission to particular individuals – less still to all individuals.

Although open to the public, church premises are private property, not a "public place." As such, they are legally under the control of the officers who have been appointed to manage the church's organisation and activities. The "managers" of the premises are entitled to establish their own rules of conduct and maintain their own procedures for keeping order. Even the police can only intervene by invitation.

Church officers are entitled to use proportionate means to remove a person who is disturbing the activity taking place. This would involve initially asking the person to leave, but if the person does not leave, it is permissible physically to escort a person off the premises, but without using violence. In case of more serious incidents, the police will come when called and will then be entitled to act on their own authority on the basis that the church has called them in to assist.

Similarly a person seeking admission whose presence in the premises the officers (or stewards acting on their behalf) judge would constitute a threat to peaceful assembly within the building may be refused entry.

People who are the worse for drink, or who are demonstrating a hostile or aggressive demeanour for whatever reason, may be among those whom a church would not wish to admit. In cases where churches do refuse entry, it is important that church representatives maintain an attitude of courtesy and helpfulness, speaking in a friendly way outside the church to those excluded, or offering to take them home, or assisting in any other way which is relevant to the circumstances.

Major and serious incidents are rare, but they do occur from time to time. For this reason churches may wish to appoint a duty officer whose job it would be to respond to any unexpected incident occurring during a service. That officer should have a mobile phone in case of the need to call for outside help. All incidents should be “played down” while they are happening, so as not to disturb the continuing service or meeting.

If the disturbance is such that the person leading the meeting feels that it cannot continue, he can suspend the meeting and ask people either to remain quietly in their seats, or to leave the building in an orderly and undramatic way, and go home. If the disturbance is caused by a person, rather than by something systematic or structural (flood, fire alarm, power cut, falling masonry, etc), going home can be the most sensible response, since in certain circumstances a disturbed person can be significantly more provoked and agitated by the presence of a crowd, especially if that crowd appears to be assuming the role of “spectators.”

CRB checks on workers among vulnerable groups other than children

Under the provisions of the Safeguarding Vulnerable Groups Act 2006, a body known as the Independent Safeguarding Authority will have the responsibility for vetting and, where necessary, barring, people seeking to work as employees or volunteers in a wide range of circumstances which bring them into contact with children and other vulnerable groups. A registration system will be introduced from October 2009, and the ISA will be concentrating initially on those working with children.

Under previous legislation, churches are entitled (though this is not a legal requirement) to make CRB checks on the leaders and helpers who run their children’s and youth activities, and the FIEC encourages and advises churches to do this.

However, there is no current legislation entitling churches to make checks on those working among other vulnerable groups. The CRB has itself recently issued a statement pointing out that checks of this nature are currently only available to the formal public or private care services in connection with paid staff appointments.

In view of this, until different arrangements under the ISA take effect in or after next October, the FIEC will only be processing CRB checks on behalf of churches in respect of people involved in children’s or youth work.

Future issues of *Blue Pages* will explain how the new ISA arrangements will affect churches once the details have become clear.

New immigration rules

A new set of immigration rules came into effect on 27 November 2008 and will apply to all Christian ministers,

missionaries and other workers from non-EU countries wanting to work in the UK.

The new points-based system replaces the former requirement for the worker to obtain a specific minister of religion/missionary visa.

Under the new rules, churches wishing to employ a non-EU minister or worker will need to apply for a licence from the Home Office. Most churches will meet the qualifying criteria for a licence, more details of which are available on a government web site www.bia.homeoffice.gov.uk/employers/points/sponsoringmigrants/eligibility/tier2religion/

Anyone employing a non-EU subject without being licensed as a sponsoring body can be faced with on-the-spot fines of up to £10,000, and will also be liable to prosecution and a possible prison sentence on conviction.

Applicants for entry to the UK must obtain the Tier 2 Ministers of Religion visa, eligibility for which requires 70 points under the points system. Sponsorship by a licensed organisation will provide 50 of those points, and the other 20 are evenly divided between maintenance and English language skills. Maintenance involves a statement that the applicant has enough funds to support himself and any dependants for the whole period of their stay. In particular, applicants will be required to have £800 in a bank account, with an additional £600 for each dependant, at the time of their application. Applicants must also be qualified to do the job in view and must intend to be based in the UK.

When renewing a Tier 2 visa, applicants must pass the points test again, but after five years in the UK will be able to apply for settlement as a permanent resident.

Further information for applicants is available on a government web site [www.workpermit.com/uk/uk-immigration-tier-system/tier-2/ministers-religion.htm]

The information and advice provided in *Blue Pages* is compiled with considerable care as to its accuracy, but the FIEC can accept no responsibility for the consequences of any action taken in the light of the material contained in *Blue Pages*.

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