

Blue Pages

Practical Information for Churches

Issue 94 November 2009

GOVERNANCE ISSUES

Late for the Commission

Information about every registered charity in the UK is available on the Charity Commission web site. A dedicated entry for each charity contains trustee and contact details, formation date and purpose, and the charity's track record in returning to the Commission any required accounts and reports by the deadline. Charities which are late with their returns will find this failure recorded in red lettering. The red-lettering will remain in place, and thus the defaulting will be publicly displayed, for the next five years. After the end of each financial year, a charity has 10 months (nine months in the case of charities which are companies) to file its returns on time. If returns are overdue but have not yet been received by the Commission, a charity's record will show the precise number of days overdue. The lesson from all this is that every church which is a registered charity should make it a priority to file its returns on time.

Excepted no longer

Churches affiliated to the FIEC are "excepted" churches under the Charities Act 1993, and are not required to register as charities, unless they have an annual income of £100,000 or more. This right of "exception" is clearly spelt out in The Charities (Exception from Registration) Regulations 1996 (Statutory Instrument 180), in which the FIEC is mentioned by name as an excepted body.

However, the Charity Commission has now indicated that "excepted" status does not extend to churches which are not affiliated to the FIEC, but for which FIEC Limited is holding trustee.

In the light of this judgement, churches in the trusteeship of FIEC Limited, but not affiliated to the FIEC, will, if their income is more than £5,000 per year (the lower threshold for compulsory registration as a charity), either have to register as charities or to join an excepted body, such as the FIEC.

Risk assessment

Following recent changes in the rules and thresholds,

it is unlikely that any churches are now legally obliged to undertake the general annual risk assessment referred to in paragraph 45 of SORP 2005.

Charities required to conduct a risk assessment are those which are legally obliged to have their accounts audited (as opposed to having them independently examined).

For accounting periods beginning after February 2007, only charities with a gross annual income of £500,000 and a balance sheet balance of £2.8 million are required to have their accounts audited.

Under the Companies Act 2006, those charities which are also companies will be exempt from having to conduct an audit if they are classified as *small companies*. The definition of a small company is one which has an annual turnover of £5.6 million or less, and a balance sheet total of £2.8 million or less.

Companies which have to have their accounts audited because their own articles require it – irrespective of whether it is a legal requirement in their case – will not have to undertake a risk assessment.

SORP 2005 nonetheless recommends as good practice that every charity should carry out regular risk assessments.

For those wanting to carry out a risk assessment, the Charity Commission has produced a helpful booklet entitled *Charities and Risk Management* and the Health and Safety Executive web site also carries a considerable amount of helpful information.

Legislation affecting companies

A small number of churches have changed their governance structure and have become companies. We do not advise this, but independent churches are free to opt for that route. The motive which often drives church officers to advocate a change to company status is the presumption that it will remove or reduce personal liability in the event of a financial failure.

However, churches which are companies need to beware of the implications of the Corporate Manslaughter and Corporate Homicide Act 2007. This Act, containing health and safety measures, is one of the outcomes of the Ladbroke Grove (Paddington) Junction rail crash in 1999. It enables companies to be prosecuted for culpable safety failures when there is insufficient evidence to pin responsibility on specific individuals. Under the provisions of the Act, directors can be prosecuted if their neglect or failure leads to the death of an employee or a member of the public.

The scope of the Act means that directors must take all possible steps to ensure that an allegation of neglect cannot be made against them. In a church situation, this will include ensuring that employees' cars are properly maintained and insured, if used on church business, and that valid driving licences and MOT certificates are in place.

EMPLOYMENT ISSUES

Tax implications of leaseback

Some churches and pastors have entered into a leaseback scheme under which the pastor owns his own house, but has leased it to the church so that the church can meet a number of expenses in relation to the house without breaching charity or taxation rules.

However, in England and Wales, if the church pays the Council tax and water charges, the pastor is liable for income tax on the value of the benefit he is receiving in not having to pay the Council tax and water charges himself. HMRC guidance (EIM60011), in describing earnings exempted from liability to income tax, refers to the normal exemption for these statutory deductions, but then goes on to say that they are applicable *except in so far as they relate to any part of the premises for which the minister receives rent*. In a leaseback situation, the pastor is receiving rent, and is therefore not eligible for the exemption from a tax liability for statutory deductions.

In Scotland, the church, rather than the pastor, is liable to pay the Council tax on a leaseback scheme property, and so no tax liability can fall on the pastor.

Employers to face compulsory pension contributions for staff

Under the provisions of the Pensions Act 2008, employers will, for the first time, be obliged to offer a contribution to staff personal pensions from 2012.

The scheme will only apply to employees earning at least £5,035 per annum, and the arrangements will be phased in over three years.

In the first year a minimum of 2% of qualifying earnings will have to be contributed to the scheme, of which 1% will be contributed by the employer.

In the second year a minimum of 5% of qualifying earnings must be contributed, of which 2% will be contributed by the employer.

In the third year and thereafter a minimum of 8% of qualifying earnings must be contributed, of which 3% will be contributed by the employer.

Eligible employees will be automatically enlisted for a pension scheme unless they make a deliberate choice to opt out. Employees who do not opt out will be required to make a larger contribution than the employer.

Where existing voluntary arrangements by employers already exceed these minimum provisions, there will be no need for the new scheme to be adopted, as the existing arrangements fully meet the purposes and requirement of the Act.

The intention behind the scheme is to encourage a greater awareness of, and commitment to, the need for pension provision. A large proportion of the population of the UK currently has no personal pension provision at all.

Review of default retirement age

In response to changing demographic and economic circumstances, a government review of the Default Retirement Age (DRA), previously scheduled for 2011, has been brought forward to 2010. Under the present arrangements, employers can require all staff to retire at 65 regardless of their circumstances. However, research has suggested that more people would work beyond age 65 if their employers permitted. Employees can currently work beyond age 65 if they and their employers wish them to do so.

Any change in the DRA, and in the legal entitlements to work beyond age 65, will apply to churches. The 2010 review is likely to include a consultation period – details yet to be announced – during which the views of employers and employees will be sought.

FINANCE

Four-year cap on VAT re-claims

Following a recent court case, a new time limit has been established for re-claiming overpayments of VAT from HMRC. Reclaims are now only eligible if they relate to payments of VAT with a tax point date of 1 April 2006 or later. From 1 April 2010 onwards reclaim applications will only be considered in respect of payments with a tax point date no older than four years.

Water charges imposed on churches

After a year of major controversy, Environment Secretary Hilary Benn announced at the Labour Party Conference on 28 September 2009 that the government would be legislating to allow water

companies to vary charges so as to relieve churches, Scout huts, village halls and other similar social groups in the voluntary sector of the swingeing increases which would have resulted from a new charging strategy for surface water drainage proposed by OFWAT. The OFWAT strategy would have treated these low-user social groups as “businesses” on a par with commercial undertakings. The crippling increases – tenfold in some cases - would have arisen because under the previous system many churches were not being charged at all for surface water drainage, as this was based on rateable value, and church premises do not have a rateable value. They paid a modest fixed charge for water supply and sewerage services. Following the new legislation, charges to voluntary social groups will still need to be fixed by the water companies, but these are likely to be calculated in a similar way to those which previously applied.

Church fuel bills

Fuel bills continue generally to be volatile, but the companies supplying fuel are still competitive in their quest for business, and at present on-line energy plans are at their cheapest for 15 months. Churches whose present contracts are nearing their end should be able to find a company which is now charging less than the price of their existing contract.

HEALTH AND SAFETY

Health and safety law poster

In April 2009 the Health and Safety Executive published a new health and safety law poster, in succession to the previous version which had been in use for 10 years. All employers, including churches, are required to display a health and safety law poster or to give all their employees a copy of the equivalent health and safety law leaflet. If churches still have the old poster, it will remain legally valid until April 2014, but churches will probably want to replace it with the new poster as soon as practicable. It can be purchased at most High Street stationery outlets. The HSE itself is charging £7.34 for the standard version and £11.75 for the semi-rigid version, but shop around. Various suppliers are quoting prices as low as £4.95 for the standard version and £10.18 for the semi-rigid version. Allow for whether VAT and carriage are included in quoted prices, and make sure that the quoted price is for one single poster, rather than the unit price of one poster within a multiple pack.

New first-aid course

Legal requirements in connection with first-aid provision are governed by the Health and Safety (First Aid) Regulations 1981. These require employers, including churches which have any paid staff, to carry out a needs assessment taking account of all relevant risks for which a first-aider might be necessary.

If that needs assessment concludes that qualified first-aid assistance is necessary, the Health and Safety Executive has introduced from 1 October 2009 a new first-aid qualification which is likely to suit the level of need faced

by churches. This is the EFAW (Emergency First Aid at Work) qualification, which is a certificate issued following a one-day course.

Having qualified first-aiders is not an absolute legal requirement, but if an incident occurred churches may wish they had one, and may want to consider voluntarily sending appropriate people on a local EFAW course. Alternatively the one-day course can come to you, some providers charging around £500 plus VAT to train up to 12 people. For more information about the EFAW course, enter EFAW course into a search engine, or go to the HSE web site (www.hse.gov.uk/firstaid/).

Food hygiene regulations

Churches frequently inquire about the current legislation affecting catering provision on church premises. The most thorough summary of the present requirements in connection with procedures, conditions and equipment in church kitchens is set out in The Food Safety (General Food Hygiene) Regulations 1995.

Enter the full title of these Regulations into a search engine and click on the *opsi* (Office for Public Sector Information) web site. This will bring you to the text of the Regulations, and the Schedules accompanying them.

CHURCH LIFE AND OUTREACH

Independent Safeguarding Authority - Vetting & Barring Scheme

The first phase of the new Independent Safeguarding Authority's Vetting and Barring Scheme was implemented on 12 October 2009. This first phase includes the following changes:

- The previously existing barred lists have been replaced by the ISA Children's List and Vulnerable Adults List. Initially, information on these lists can be checked by means of an Enhanced CRB Disclosure check. Standard CRB Disclosure checks are therefore no longer available for people working with children or vulnerable adults. However, the FIEC has for some time been recommending that Enhanced CRB checks should be undertaken for those working with children, so this change should have little impact on CRB Disclosure applications by churches.
- The eligibility categories for CRB Disclosure checks have been extended to reflect the fact that Disclosure checks can now be requested on anyone involved in 'regulated activities' relating to children or vulnerable adults. A full definition of a 'regulated activity' can be found at - http://www.crb.homeoffice.gov.uk/guidance/rb_guidance/eligible_posts.aspx
- There is a legal duty on employers and voluntary organisations to refer any information about

individuals who may pose a risk to children and vulnerable adults to the Independent Safeguarding Authority. A referral would need to be made when a service provider has taken some action in respect of a staff member, whether paid or voluntary, on the basis of harm or risk of harm to children or vulnerable adults; relevant conduct has occurred; or an individual has received a conviction or caution for a relevant offence. More information about this duty to refer can be found at <http://www.isa.gov.org.uk/default.aspx?page=397>

Further phases of the Independent Safeguarding Authority's Vetting and Barring Scheme will be implemented in July 2010 and November 2010. Details of these further phases of implementation remain as stated in the June 2009 issue of *Blue Pages*. Further details will be given in future editions of *Blue Pages* as additional information becomes available. For general information about the ISA Vetting and Barring Scheme please refer to the ISA website - www.isa.gov.org.uk

Car insurance in relation to use for church purposes

Where lifts are a private arrangement and not organised by the church, transporting people to church is not a "church activity." The driver has a general duty of care towards the passenger, but comprehensive class 1 car insurance cover, which includes business use, is normally likely to be adequate. However, it is the responsibility of car owners, not the church, to make sure that they have adequate insurance cover for all the purposes for which they use their vehicles.

Where transport arrangements to various meetings and activities are organised by the church, the church has a duty, under the Vetting and Barring Rules, to ensure that all the drivers involved are properly qualified under child protection legislation to provide this service. This will involve ensuring that anyone needing to be registered with the Independent Safeguarding Authority (ISA) is properly registered. Enlisting drivers in a church-run transport scheme will also oblige the church to ensure that the driver has checked that his or her car insurance is sufficient to cover the use.

No Cold Call Zones

In some part of the country, County Councils have introduced areas described as *No Cold Calling Zones*. The aim of these zones is to discourage rogue traders and doorstep crime. The zones are usually very small – no more than 50 homes, and tend to be marked by notices on local lamp-posts, and stickers on the front doors of homes within the zone. Churches which undertake door-to-door visitation will need to be aware that such areas exist. Although unsolicited visits to homes in a *No Cold Calling Zones* are not illegal, residents receiving such visits are likely to regard the visitors as discourteous, unreasonable or intimidating, since the callers will have ignored the *no cold calling* purpose of the zone. This will not be a good starting-point for a winsome contact with the local community. Churches are advised, therefore, not to call speculatively within a *No Cold Calling Zone*, but to consider

other ways of making contact. One method would be to send a letter to each of the homes in a zone, pointing out that someone from the church would normally call, but that you are respecting the wishes of the residents. The letter could enclose details of the church and its meetings, and invite residents to reply by 'phone or email if they have any particular needs. Zones are usually set up on the initiative of residents, in areas where there have been doorstep crimes, such as distraction burglaries, or where there is a cluster of elderly, vulnerable residents. They are administered, on behalf of local authorities, by local trading standards departments.

Prayer lists and data protection

In trying to interpret most types of modern legislation, it is possible to strain at a gnat, while swallowing a camel. However there are times when a proposed action by a church is so minor and trivial that it seems utterly pedantic to point out its probable illegality, even though in principle it strikes at the heart of the intended purpose of the legislation.

A case of this kind occurred recently, when a church merely wanted to circulate a printed list of names, for the purpose of prompting people to pray. Many churches print much more than this about individuals on notice sheets week by week, and this is not a problem, since regular attenders are regarded as "supporters" of the organisation – a category which justifies a less sensitive interpretation of what can lawfully be done under the Data Protection Acts. But a structured list, however basic, including the names of people not connected with the church (e.g. the parents of children attending church activities), is a different matter. Although there are many grey areas when seeking to interpret legislation, one useful practice is to try to imagine the reaction of people not connected with a church, who discover that their name, without their knowledge, has been included on a list which has been officially printed and circulated to members. Our conclusion in applying this test was that such a discovery could well cause unease and concern, and our advice as a result was that the church should not circulate such a printed list, but should instead mention the people orally at a prayer meeting. Only a court can decide what is lawful and what is not in these circumstances, but churches have a responsibility to use their best and dispassionate judgement, in such cases.

MISCELLANEOUS

Legislation

When seeking to know what current legislation requires, there is no better source than the Acts of Parliament or Statutory Instruments themselves. Those passed in the last 40 years are now available on the web site of the Office of Public Sector Information (OPSI). Enter the title of the Act or Regulations in a search engine, and the appropriate

OPSI web site, containing the verbatim text of the legislation, should appear. Knowing precisely what the law says will enable churches more easily to comply with it.

Venues for marriage ceremonies

Strict rules apply to where marriage ceremonies can take place in UK, and these can present difficulties when a couple wishes to marry at a church venue outside the area where one or both of them live.

The current rules require either that one of the parties lives in the registration district in which the venue church is situated, or that the church is the normal place of worship of one or both of the parties.

However, from time to time, circumstances may arise in which a couple may want to marry at a venue which does not qualify under either of the above two criteria. For instance, the couple may wish to marry in a recent former church with which one or both of them has had a strong association; or the bride's father may be the pastor of a church in another part of the country and it may suit the family circumstances for the marriage to take place in his church.

There is only one way of legitimising such a ceremony. One of the parties can arrange to be temporarily resident in the area for seven clear (full) days prior to giving notice of the marriage to the Superintendent Registrar. This means that notice cannot be given earlier than the ninth day – otherwise residence will not have been for seven full 24-hour days. The other party must give notice on the same day to the Superintendent Registrar in the registration district where he or she lives. After giving notice, which must be at least 15 days prior to the ceremony, the party in temporary residence can move back to where he or she lived before.

This is an absolute requirement under marriage law. Superintendent Registrars have no discretion to agree or allow any relaxation of these rules.

ONS survey of businesses

Churches are sometimes selected by the Office for National Statistics (ONS) for inclusion in sample surveys connected with employment. Some of these surveys carry a legal obligation to participate. If this is the case, there is a guarantee offered by ONS which limits the bureaucratic burden of such surveys.

For businesses employing fewer than 10 people, ONS gives a guarantee that if selected for an ONS survey, employers:

- will be notified of the period during which they will be included in the survey (generally not exceeding 15 months)
- will not be required to contribute to another of ONS's statutory surveys during that time
- following this period, will not be required to contribute to any statutory ONS postal survey for a further three years

If the ONS appears to be exceeding these limits, churches can courteously decline to take part. There are also, however, telephone surveys which are additional to the postal ones and are not covered by the guarantee which applies to postal surveys.

Blue Pages is published by The Fellowship of Independent Evangelical Churches. While every effort has been taken to verify the accuracy of the material it contains, the FIEC can accept no responsibility for the consequences of the use of the information or advice contained in *Blue Pages*.

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