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INFORMATION FOR CHURCHES

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Late accounts could mean loss of charity status

The Charity Commission in England and Wales is getting tougher with registered charities which are late in submitting their Accounts, Annual Returns and Trustees' Annual Report, where these are legally required.

At present, registered charities are allowed 10 months after their financial year-ends to submit their returns. After this the documents of a charity are stated on the Charity Commission's web site (www.charity-commission.gov.uk) to be “overdue.”

However, the Commission is now threatening that any charities whose documents are overdue for more than 12 months will be at risk of losing their charity status. The exact wording of this warning is: “If the Commission has not received a charity's outstanding documents 22 months after their financial year end, they may be removed from the register.”

Churches not required to register because they are “excepted” churches are nonetheless legally obliged to have their accounts completed and available for inspection on request within 10 months of each financial year end, even though they do not have to submit them to the Commission.

Association of Church Accountants and Treasurers

In a world of ever-increasing regulatory accountability, church treasurers can easily feel daunted or intimidated by the burdens of their task. Some treasurers may not realise that there is a body called the *Association of Church Accountants and Treasurers*, which provides a handbook, holds three conferences a year, carries out regional training seminars, publishes a quarterly newsletter, and operates a help-line. It does all this for a modest subscription of £12.50 per annum.

Those wishing to make contact can email Alan Wilson at ajwilson30@googlemail.com, or telephone him at 01623 795510.

Gift Aid – transitional relief to offset lower tax rate

From 6 April 2008 the government is providing charities with transitional relief to offset the loss of income which would otherwise result from the reduction in the income tax rate from 22p to 20p.

In the first instance, for all gifts made in the new tax year, churches will need to make their Gift Aid claims on the basis of the new lower tax rate, which will mean that they will recover 25p from HMRC. After the Finance Act has received Royal Assent, expected by the end of July, the government will re-visit all claims already made in the financial year, and top up the original claims with an additional 3p in the pound.

This transitional relief is not permanent, but will apply to all Gift-Aided donations made up to 5 April 2011.

For donations received up to 5 April 2008, tax can still be reclaimed based on the former tax rate of 22p in the pound, which will mean that the church will recover 28.2p in the pound. No additional relief will be needed or applicable in this case.

Gift Aid – donations by those receiving remuneration from the church

The question is often asked whether someone receiving remuneration (a pastor, for instance) from the funds of a church is entitled to give by means of Gift Aid to the church which is paying him.

The answer is that all paid members of staff of any charity are entitled to give under Gift Aid to the charities which employ them. This applies in whatever capacity the donor is employed, and it also applies irrespective of whether the person is a trustee of the charity or not.

Gift Aid – “substantial donor” restrictions

Controversial government proposals to impose complex requirements and monitoring procedures on the charitable giving of “substantial donors” is to be subject to a formal Consultation.

However, the details of the Consultation have not yet been announced, so it is not known when it will take place, how long it will last, nor precisely what issues will be covered.

Some small churches and Christian organisations are dependent upon the financial support of a small number of “substantial donors” and there are fears that tighter restrictions, irksome bureaucracy and an obligatory loss of confidentiality will deter “substantial donors,” and therefore put the works they support at risk.

By the government’s definition, a substantial donor is one who gives £25,000 or more to a charity in a year, or £100,000 over six years.

The proposed new restrictions are intended by the government to prevent charities being used as a means of tax avoidance.

Gross interest on deposit and investment accounts

Banks and building societies often think that if an organisation does not have a registered charity number, then it cannot be a charity, and is not entitled to receive gross interest on its accounts.

However, thousands of churches are “excepted charities” – entitled to all the charitable privileges available to registered charities without being obliged to register.

On the forms which churches complete when opening accounts with banks and building societies, there is often no reference to “excepted charities” and no box to tick which fits the circumstances and status of the church trying to open the account.

We have recently persuaded the Skipton Building Society to change its forms to allow for “excepted status” (and thus to pay gross interest on deposits and investments) and if churches encounter other institutions which need similar persuasion, we will be happy to take this up with the bank or building society concerned.

Coffee shops and business rates

A recent decision by a Valuation Tribunal shows that while in some circumstances a coffee shop run by a church may be subject to business rates as a trading activity, there are certainly instances where the activity would be exempt from business rates.

In March 2007, the Derbyshire Valuation Tribunal ruled that a church coffee bar and book shop situated within premises which also included a church, church hall area and ancillary rooms, should be exempt from rates. Until this ruling, the part of the premises used as the coffee bar and book shop had been rated.

Key points which led to the Tribunal’s ruling was that the area used by the coffee bar and bookshop was an integral part of the church’s premises; that the coffee shop activity was a deliberate part of the church’s overall mission and service; and that the coffee bar and bookshop area was used for a wide range of other church purposes when the shop was closed.

If their circumstances are similar, other churches which run coffee shops and bookshops in their premises, and are currently subject to business rates, may wish to consider whether an appeal to their local Valuation Tribunal would be justified.

VAT on new buildings and annexes

In normal circumstances, the only type of building work which is free of VAT is the construction of a new building separate from any existing building on the same site – in other words, not an extension of an existing building.

However, it has come to our notice that there is a permitted exception to this, in that a building which qualifies as an “annexe” can be constructed free of VAT, even though it is attached to an original building.

In order to qualify, an “annexe” must be used for charitable purposes, must have its own main entrance, and must be used for a purpose which is distinct from the activities carried out in the main building. The main building and the annexe are, however, permitted to have utility services, such as water and electricity, in common.

Churches are also reminded that where a “design and build” contractor is employed to undertake the entire project, the design costs have the same VAT status as the build costs. This means that if the building work is VAT-free, then the architects’ fees will be VAT-free. Where an architect is employed separately, the fees will always be subject to VAT, whatever the VAT status of the building work.

In practice, most church building projects which are not entirely new buildings are rightly classed as “extensions,” since they are being built in order to provide more space for existing activities, and do not usually have their own main entrance. Such extensions are not exempt from VAT.

Water charges

As was reported in the February issue of *Green Pages*, some churches are being hit by a dramatic increase in water charges, as a result of a new method of charging for surface water drainage costs.

The new charges are calculated by site area, whereas previously the charges were based on rateable value. As churches in England and Wales do not have a rateable value, this meant that under the old system, most churches were not charged at all for surface water drainage. Under the new system, not only will churches be paying for surface water drainage for the first time, but those which have a large land area will be faced with particularly high bills, out of all proportion to what they have historically paid. In our considered view the new method of calculating charges, and the refusal of the water industry to consider churches as a unique category of consumer, are both unreasonable.

Four water companies have so far made the decision to introduce a new system of charges based on site area – United Utilities, Severn Trent, Yorkshire and Northumbria. Some of the churches in the areas supplied by these companies will be affected from 2008-2009. The real impact will be worse than immediate bills will indicate, since the full impact is masked by a three-year transitory period, during which the new charges will be implemented in three steps. Ultimately in a full year some churches will be paying well over £1,000 a year to their water companies.

The change to the new system is being driven by OFWAT, which sees it as fairer to all customers. The government (DEFRA) has acquiesced in OFWAT's new strategy. Companies are not obliged to adopt the OFWAT strategy, but those that do can reasonably argue that they have been encouraged to do so by OFWAT.

In view of this, the FIEC are seeking a meeting with OFWAT, in order to take the issue further. Depending on the outcome of that we will consider making representations to DEFRA, as the government has political control of all water industry and supply policy.

In the meantime it would be helpful if churches affected by the changes would make contact with Rod Badams at the FIEC office to provide the detailed information which will strengthen the case being presented.

An on-line petition has been launched calling on the government to re-instate the former charging policy. Readers of *Green Pages* can add their own names to this petition by going to <http://petitions.pm.gov.uk/ChurchWaterBills>

National Minimum Wage

The National Minimum Wage Act 1998 was amended in March 2008 to enable voluntary workers to claim a wider range of expenses without triggering a legal requirement for their "employers" to pay them the minimum wage. The key change to the wording is the extension of the words "incurred in the performance of his duties" to include "incurred in order to enable the worker to perform his duties." In our view this change will mean that those charities which make use of voluntary workers will be able to reimburse, if they wish, their travel costs to the workplace, and, for instance, any child care, carer or pet care costs, without this breaching the NMW Act.

Benefits in kind - £8,500 threshold retained

Those employed for a remuneration amounting to less than £8,500 (including the value of benefits in kind) are not liable for income tax and National Insurance contributions on a wide range of benefits in kind. After a recent Consultation, the government has decided to retain this threshold. Had the threshold been abolished, more very low-paid workers would have been subject to a tax liability on benefits in kind.

Among the benefits which do not raise a tax liability below the remuneration threshold of £8,500 is the provision by the employer of a car which can be used for personal as well as work-related purposes.

Those earning below the threshold are also not liable for tax on private medical insurance and interest-free or reduced-rate loans provided by the employer.

However, a few benefits in kind still incur a tax liability below the threshold, including some types of accommodation provision which do not fit the normally exempt "occupation of manse" arrangement.

Admissions to Church of England Schools

Children of parents who belong to churches linked with Affinity are now formally eligible to be admitted to Church of England schools. Admission rules generally require parents to attend churches connected with denominations belonging to *Churches Together*, but the new arrangement renews an understanding first drawn up in 1992 between the then British Evangelical Council and the Church of England Council for Christian Unity. Parents seeking entry to schools should explain to the school that the Church of England education authorities have agreed that membership of an Affinity church is a qualifying church connection. In cases of difficulty, a letter can be obtained from Affinity (email: admin@affinity.org.uk; tel. 01656 646152). Church schools will obviously still be free to refuse places to applicants for other reasons (e.g. if they are over-subscribed), but it will not be for lack of an eligible church connection.

Copyright up-date

As a result of technological advances, new electronic media facilities and resources are constantly becoming available. Many of these developments have copyright implications which need to be constantly reviewed and addressed.

In particular, churches should be aware that if they broadcast their own services in full from their own web sites, they will need a Limited On-line Exploitation Licence from the PRS-MCPS Alliance. The precise licence cover needed will depend on what is being transmitted and how. Further information about LOELs, and contact details for the PRS-MCPS Alliance are available at www.mcps-prs-alliance.co.uk

If only sermons are transmitted via web sites, as distinct from whole services, no copyright issues arise and no licences are needed.

When churches record their own services in any permanent format (cassette, DVD, MP3 etc.) - perhaps for the benefit of frail or elderly members not able to attend in person - copyright requirements are satisfied by the Church Copyright Licence, which most churches will already have, as this is the one which enables them to photo-copy words or display them electronically by means of laptops or data projectors.

There are two other copyright-related points worth noting:

[] A Church Copyright Licence is not building-related, but organisation-related. This means that church-arranged events held in other venues are still covered.

[] If a commercially available DVD is shown at a house group or at a children's activity held in a home, this is not likely to require separate copyright clearance, unless the meeting is advertised as being for the general public. However if a similar showing takes place on the church premises, this would be classed as public viewing rather than personal home use, and a Church Video Licence would be required.

A helpful information pack has just been produced by Christian Copyright Licensing International. This organisation can answer all copyright-related queries, can issue most licences and can advise inquirers how to obtain any licences it does not itself issue. A useful service which CCLI has introduced is the copyright "health check." This involves completing a questionnaire online, as a result of which CCLI will indicate what licences the church needs, or how it can most effectively vary its practices in order to conform to copyright requirements. The CCLI web site is at www.ccli.co.uk

Appointing pastors from overseas without the necessary visas

Churches are reminded that it is a criminal offence to appoint someone from a non-EU country to any remunerated post in the UK without the appropriate visa. A case has recently come to light of a man who came to the UK from Africa to undergo theological training, but who stayed on afterwards, accepting a call to a pastorate in England, even though he still only had a student visa.

On a student visa, there are strict limits on the extent to which the holder is entitled to engage in paid work. Not surprisingly, the holder of such a visa is also required to be a bona fide student. The pastor concerned was in breach of both these requirements. At the time of the appointment, it had not occurred to the church officers to check out their new pastor's visa status.

All employers – and this includes church officers inviting men to become pastors of local churches – must by law ensure that the candidate being called is entitled to work in the UK. The appropriate visa in these circumstances is the minister of religion visa, and church officers should insist on seeing and photo-copying either this visa or other document(s) from given lists, proving the candidate's right of residence and right to work, before formally confirming the appointment. Failure to do this can lead to prosecution, and a fine of up to £5,000.

The legislation which covers these requirements is the Asylum and Immigration Act of 1996. More detailed information about the legal requirements and responsibilities imposed by this Act can be obtained by keying *Asylum and Immigration Act* into an internet search engine.

Trespassing safely

The Occupiers' Liability Act 1984 imposed a duty of care on the occupiers of premises, requiring them to keep their site and premises free of danger, even if those at risk from any danger have no lawful authority to be in the vicinity of the danger. At the time of its enactment, this legislation was sometimes referred to as the Trespassers' Charter. However, it is still in force, though it is only applicable in England and Wales.

Church premises which are only in use for a few hours a week run a greater risk of attracting trespassers, and church officers need to ensure that the premises are kept in a constantly safe condition, with secure fencing, and that appropriate warning signs are in place and well-maintained.

Safeguarding Vulnerable Groups Act 2006

The new independent Safeguarding Authority, which will take up its work in October 2009, will be one of the most powerful bodies in the country, having the power to determine who will be allowed to work among children or other vulnerable groups in any employment or voluntary organisation.

The ISA, which was established by the Safeguarding Vulnerable Groups Act 2006, is expected eventually to have 11 million people on its register.

As a result of a government Consultation earlier this year, it has now become clear that church members who arrange to collect people from care homes to take them to church, and groups of parents who arrange between themselves to transport their children to church kids' clubs, will not have to be registered with the ISA.

The crucial factor which will determine the requirement to register with the ISA is whether the transport arrangement is a private one made by individuals, or whether it is an arrangement made by and provided for by the church. In the case of a regular arrangement by a church to collect children from several different addresses in a church-owned minibus, it is likely that the drivers involved will be required to be registered with the ISA, as this comes into the category of "regulated activity" under the SVG Act.

It is still not clear whether volunteers who help with the catering for a church lunch club for the elderly will be required to register with the ISA. This is expected to be clarified in the course of further Consultations. Further consideration is also to be given to whether the trustees of an organisation involved with vulnerable groups, but where the trustees are not personally involved in the front-line work, should be required to register.

Sunday School teachers will be required to register with the ISA, as they have direct contact with children, often as the only adult present, in a position of trust. Where someone is already registered for other reasons (e.g. their employment,) churches will be required to confirm their ISA registration, but will be able to make their own decisions as to whether to apply for Enhanced Disclosure checks.

Even in the categories in which a requirement to register with ISA is confirmed, an actual requirement to register will not take effect in all categories immediately, as the different categories to which a registration obligation applies are to be phased in over a five-year period, starting with those working among children.

It is also the case that immediate registration will only be required where people are taking up a new paid or voluntary appointment on or after 12 October 2009. Registration of those already in post before 12 October 2009 will be phased in over a period of time.

Although paid employees will be charged £64 to register with ISA, any volunteers obliged to register will be registered free of charge. Checks made through an umbrella body will attract a modest charge, as they do now, to enable the umbrella bodies to cover their own staff and administration costs.

More information, as further details become clear between now and October 2009, will appear in future issues of *Green Pages*.

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