



## AECW GREEN PAGES FEBRUARY 2010

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### **Use of empty shops by churches and other charities**

In the wake of the recent recession, there are many shops standing empty in towns and cities throughout the UK. A number of charities, including churches, have taken advantage of this, becoming rent-free tenants of shops, and saving the landlords money in the process.

It sounds too good to be true, but it is true. The way it works is this. The church or other charity becomes the tenant of the shop and also therefore becomes liable for the business rate due on the shop premises. However, as a charity, the tenant is entitled to an 80% discount on the business rate. The landlord reimburses the charity the cost of the 20% business rate, and in a typical recent instance makes an additional gift to the charity of a further 20%. The landlord is still saving 60% of the business rate, which in some cases can amount to thousands of pounds. If the shop stands empty, and the landlord either cannot or does not want to sell it, or is struggling to let it commercially, the landlord would be liable for 100% of the business rate levied.

One proviso is that the whole of the premises tenanted must be used for charity or church purposes – not just a window display. However, churches ought to be able to think of appropriate and imaginative uses of such premises, and to extend both their public visibility and the usable space they have available.

The only disadvantage is that the arrangement could be brought to an end if the economy improves and the landlord has an opportunity to do something more commercially beneficial with the premises.

The first step would be to investigate the empty shops in the area, to contact any agents who are trying to advertise them for sale or letting, and to ask them to put a proposition of this type to the owner.

### **Charities and Elections**

The Charity Commission has published fresh guidance on how charities must conduct themselves in the run-up to an election. Charities must not encourage support for a particular political party or candidate, seek to influence voter behaviour, nor donate money to a political campaign or party.

Charities are, however, permitted to seek to persuade political parties to adopt policies, and to raise the public profile of issues. If its own aims happen to coincide with a policy of a political party, it is permissible for a charity to campaign on that issue, as long as in doing so it does not specifically identify with the political party which shares the charity's stance.

A charity may invite all candidates to a public meeting, and any decision not to invite all candidates must only be based on what is in the charity's interests. For instance, if the policies of a party are opposed to the aims of the charity, or if the police advise that disorder could occur, the charity would be free not to invite any candidates to which these circumstances apply, since both of these factors can easily be seen to be against the charity's interests.

The full guidance is available on the Charity Commission's web site. The quickest access is to enter *Charities and Elections* into a search engine.

### **The Equality Bill and its implications**

Against the government's wishes, the House of Lords passed three amendments on the Equality Bill on 25 January. These amendments were subsequently accepted by the government.

The effect of the votes in the Lords is significant. Had the Bill been allowed to stand as originally drafted, there would have been few circumstances in which religious charities would have been able to discriminate in order to ensure that candidates for posts within the organisation personally shared the beliefs and values held by the organisation.

However, following the success of the amendments in the Lords, religious charities will be able to discriminate lawfully in a number of specified ways, provided that the reason for the discrimination is connected either with the doctrines of the religion, or with the strongly-held convictions of a significant number of the religion's followers.

The areas to which the permitted discrimination applies include the following: a requirement to be of a particular sex; a requirement not to be a transsexual person; a requirement not to be married to a person who has a living former spouse; a requirement relating to circumstances in which a marriage came to an end; a requirement related to sexual orientation.

### **Clearing snow**

Churches are sometimes cautious about clearing snow from their frontage or car park, fearing that they might then be liable in law if people slip over in the cleared area and injure themselves. This is one of the many health and safety myths which abound.

In fact the myth has become so prevalent that Communities Secretary John Denham issued a statement on 12 January 2010 which included the following:

*"The response (to the challenges of the severe weather) showed Britain's community spirit in action with many people volunteering their support where needed, from lending vehicles to help transport food to vulnerable people, to digging clear paths to re-open schools, or coming out of homes with shovels to get stranded emergency vehicles moving. With the cold spell set to continue in many parts of the country, the Government is joining forces with local government and the Health and Safety Executive to bust the myth that people who volunteer to undertake a civic duty could be at risk of facing legal action under health and safety laws. For example, there is nothing in health and safety legislation to prevent a person taking sensible steps to clear a pathway to improve the situation, or volunteer to do shopping for a neighbour in need. Nor should anybody who volunteers to support their community feel they are in danger of being sued and be put off wanting to help others."*

If we encounter any more snow this Winter, Mr Denham's assurances should be sufficient to enable churches to make access to their premises as safe as possible, and to adopt a commonsense approach to achieving this, without any fears or anxieties regarding any additional legal liability arising.

## Swine 'flu - latest guidance to faith groups

Compared with the predictions of mid-2009, the effects of the swine 'flu pandemic have not been as widespread as was expected. For the typical patient who contracted it, it turned out to be a milder affliction. Between the start of the outbreak and 18 February 2010 there were 423 deaths from swine 'flu in the UK.

However, the Department of Health has not changed any of its formal advice, and is still classifying the outbreak as a "pandemic." The DoH has also renewed its strong recommendation that all those in risk groups should be vaccinated, and, in spite of the significantly reduced numbers of new cases in recent weeks, has announced its expectation that swine 'flu will return in the Autumn of 2010. If the risk groups are vaccinated, this will reduce the spread of the disease, which will in turn reduce the number of deaths and cases of serious illness.

The original DoH advice to churches, which was published in July 2009 and has not been withdrawn, states: "In a pandemic it makes good sense to take precautions to limit the spread of disease by not sharing common vessels for food and drink."

However, in November 2009 the Church of England changed its own advice, which had previously been based on the DoH statement. The C of E restored to churches the option of using the common chalice at Communion services, provided that this was within the framework of its hygiene and hand-washing advice, which included the use of alcohol-based hand-cleaning rubs.

The most dangerous feature of swine 'flu is its power to spread quickly, and therefore the most important factors in containing it are:

- To ensure that people with symptoms remain at home;
- To keep all surfaces and utensils clean;
- To provide for frequent hand-washing (including the use of alcohol-based rubs) to ensure hygienic hand contact

If the above precautions are followed, there should be no greater risk than in normal non-pandemic circumstances. Nevertheless, as there has been no change in the official DoH advice, *Green Pages* is not formally changing its own advice that churches should use individual cups for Communion services. However, each church can obviously make its own decisions, in the light of the above information.

### Requirement to report public benefit

Only registered charities have to take any action with regard to the reporting of public benefit. As 85% of churches are "excepted" churches, by virtue of belonging to "excepted" associations, this means that for most churches, the public benefit requirement is a non-issue.

However for those churches which are registered, we need to alert you to the fact that the February 2009 issue of *Green Pages* was incorrect in stating that a public benefit statement was only required in Trustees' Annual Reports relating to financial years beginning in or after April 2009.

In fact the public benefit statement needs to be included in Reports for years commencing on or after 1 April 2008. We are sorry for this error. The following is the relevant guidance which the Charity Commission has issued:

### What are the requirements for reporting public benefit in an annual report?

A Trustees' Annual Report which covers any period starting on or after 1 April 2008 must include :

1. a report of those activities undertaken by a charity to further its charitable purposes for the public benefit;
2. a statement by the charity trustees as to whether they have complied with the duty in section 4 of the Charities Act 2006 to have due regard to public benefit guidance published by the Commission.

## **Independent examination and audit thresholds**

With regard to independent examination and auditing arrangements applicable to charities, the following is the requirement:

- If a church's annual income is £25,000 or more, irrespective of whether the church is registered or excepted, the annual accounts must be independently examined by a competent person who is not a church officer, a handler of any of the church's financial processes, nor a "connected person" (e.g. close relative or employer) of any of the above.
- If a church's annual income is between £100,000 and £250,000, the above still applies, unless the church has assets of £2.8m or more, in which case a full audit is required.
- If a church's annual income is between £250,000 and £500,000, and the church's assets are not greater than £2.8m, an independent examination is still the requirement, but this has to be carried out by a qualified examiner. If the church's assets are greater than £2.8m, a full audit is required.
- If a church's annual income is more than £500,000, a full audit is required.

Only where a full audit is required are churches also legally obliged to carry out a risk assessment.

## **Gift Aid - transitional relief ends in 2011**

Transitional Gift Aid relief is scheduled to end on 5 April 2011. This means that gifts made after that date will qualify for a tax recovery of only 25p in the pound, instead of 28.2p. For every £1,000 of Gift-Aided income, this will mean a loss of £32.00. Churches may want to encourage their members to bring forward their giving to beat this deadline.

## **PAYE goes paper-free**

HM Revenue and Customs is reminding all employers that, starting this year, they must file their Employer Annual Returns on line. The deadline date for returns relating to the financial year from 6 April 2009 to 5 April 2010 is 19 May. In recent years there has been a paper filing option for employers with fewer than 50 staff, but this has now come to an end.

To file on-line, employers must register with HMRC's PAYE Online service by visiting [www.hmrc.gov.uk/payee](http://www.hmrc.gov.uk/payee) and clicking *Register for PAYE Online*. Smaller employers, a category which is almost certain to include all churches, can use HMRC's free software to file their employee data. Alternatively, an intermediary can file on an employer's behalf.

## **Substantial donors**

Following several years of controversy over legislation introduced in 2006 to control giving to charities by "substantial donors," the government has announced that it intends to scrap the existing rules. Instead there will be a "purpose test" under which donors will simply have to show that the purpose of the gift is not to extract value for their personal benefit as a result of making the gift. The details of the new arrangements are expected to be announced in the 2010 Budget.

## **Independent Safeguarding Authority – implications for churches**

The new Independent Safeguarding Authority 's Vetting & Barring Scheme has been the subject of much public debate and controversy. In response to some of the concerns raised, a number of changes to the Scheme have been announced by the government. Full details of these changes can be found on the ISA website [www.isa.gov.org.uk](http://www.isa.gov.org.uk). The most relevant changes for churches concern the definitions of 'frequent' and 'intensive' in relation to regulated activities requiring ISA registration. The new minimum 'frequency' requiring ISA registration will be once a week or more and the definition of 'intensive' has been changed to include activities taking place on four days or more in one month, or overnight.

However, this change has raised an anomaly which will apply to some churches. Some activities, such as a weekly Sunday school or children's club, if staffed by a regular team of teachers and leaders, will

fall within the revised criteria for 'regulated activities.' However, if the activity is staffed on a rota basis by different people, then it is possible, depending on how a rota is organised, that no individual may come within the new 'frequency' or 'intensive' definitions. In these circumstances ISA registration would not be mandatory.

Present indications are that official advice, under 'best practice' guidelines, will still be advising volunteers in this situation to register with the ISA. Further clarification on this point is awaited, and will be reported in subsequent editions of *Green Pages*.

Another change to the scheme may affect church pastors and others who go into schools to take assemblies or participate in other activities. The revised criteria now state that individuals who visit different schools or similar settings to work with different groups of children will not be required to register with the ISA unless their contact is 'frequent' or 'intensive.'

Despite these changes, the fundamentals of the Scheme remain the same, as does the timetable for its implementation. Registration with the Independent Safeguarding Authority under its Vetting & Barring Scheme will be possible from the end of July 2010 and new workers or volunteers, starting to work in a 'regulated activity' will be obliged to register from November 2010 onwards. Existing workers in 'regulated activities' will gradually be incorporated into the scheme from 2011 onwards.

In order to facilitate registration, a CRB Disclosure Application form in a new format will be introduced from July 2010. This will include an option to request ISA registration. Stocks of these new forms will be available from May 2010 onwards. At the same time the existing CRB Disclosure Application forms will cease to be valid. For those churches which use the FIEC as an umbrella body for Disclosure checks, no Disclosure applications on the old format forms will be accepted by the FIEC after 30 June 2010. Please contact Roy Saint at the FIEC office for more details of these changes.

### **Revised legal requirements for childcare of under-eights**

Any organisation which cares for children under the age of eight has to be registered with Ofsted, unless it is excepted from doing so.

Organisations are excepted if their activities have a duration of two hours or less.

However, activities lasting for more than two hours will also not trigger registration if either of the following applies:

- (a) The children are over three years of age, the duration is no more than four hours and no more than two of the following five areas of activity are being undertaken: school study support or homework support; sport; performing arts; arts and crafts; religious, cultural or language study. If all the children are over five years of age the four-hour limit does not apply.
- (b) The activity does not take place on more than 14 days per year and the church gives Ofsted 14 days' notice before the activity takes place.

### **Chubb fire extinguisher contract**

A favourable countrywide arrangement for churches for the provision, servicing and inspection of fire extinguishers and related equipment has been negotiated with Chubb Fire Limited. Under this arrangement, churches can buy extinguishers and related items at a 40% discount, and there is a very reasonable scale of charges for annual inspections and servicing. Servicing costs £6.25 per extinguisher, plus VAT, with a minimum call-out charge of £12 plus VAT. Current prices are held until 31 March 2012.

To sign up for this competitive arrangement, churches can enter *Chubb Fire Churches Supply and Maintenance Agreement* into a search engine. This will lead to a section of the web site of the Churches' Legislation Advisory Service headed *Re: Fire Appliance Servicing and Supply Contract*. Details of the scheme are given, and there is a form which can be completed and posted to: FAO Tracy Close, Chubb Fire Limited, Corporate Accounts Division, P O Box 16, Manchester M24 4JY (Telephone 0161 654 2247 or 0161 654 2200).

## Compulsory inspection of Air-Conditioning systems

Under new legislation which took effect in January, all air-conditioning systems in excess of 12kW must be officially inspected by 4 January 2011. Inspections must be carried out by a qualified and accredited air-conditioning system energy assessor, and, following the first inspection, must take place every five years. Systems installed after January 2008 must have their first inspection within five years of the installation. The new requirements have become obligatory as a result of the Energy Performance of Buildings Directive 2006. Fines can be imposed on anyone who fails to arrange for the required inspections. However, these inspections are not all bad news. Some owners of air-conditioning systems have already made significant energy cost savings as a result of the recommendations of the assessor conducting their inspection.

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