



## AECW GREEN PAGES July 2011

### EMPLOYMENT ISSUES

#### National minimum wage

The national minimum wage will increase by 15p to £6.08 an hour from 1 October 2011. For workers aged between 18 and 20 the new hourly rate will be £4.98, and for 16-17-year-olds it will be £3.68. The rate for apprentices will be £2.60 per hour. The National Minimum Wage is not applicable to ministers of religion, but is obligatory in respect of all other remunerated staff.

#### Compulsory pensions

*Green Pages* has previously mentioned the provisions of the Pensions Act 2008, under which employers will be obliged, with effect from 1 October 2012, to provide pensions for employees earning at least £5,035 per annum.

The Department for Work and Pensions has recently indicated that the obligation upon employers to provide pensions only applies in respect of employees under contract. This therefore excludes pastors of churches who have the status of office-holder (minister of religion) rather than an employer-employee relationship with their churches. Most pastors in independent evangelical churches have office-holder (minister of religion) status.

As reasonable "employers," many churches are already making pension contributions for their pastors in excess of the minimum contribution for employees being introduced in 2012. However, churches may see the introduction of the Pensions Act provisions as an opportunity to review the pension contributions they are making for all their staff. Compulsory contributions will certainly be required in respect of staff who are not ministers of religion, unless the staff members concerned opt out by their own choice. Many staff are expected to opt out, since the new scheme involves a compulsory contribution from employees, as well as employers.

#### Salary sacrifice schemes

National Insurance rates, for both employers and employees, were increased by 1% from 6 April 2011. Increases of this significance are an incentive to consider whether a salary sacrifice scheme may be possible and appropriate.

Two examples of circumstances in which salary sacrifice schemes might be applicable to churches and their staff are in connection with contributory pension schemes, and where a member of a church's staff arranges for the church to deduct his/her giving to the church from his/her gross salary. There could also be other circumstances which qualify.

By way of example, the illustration below shows the payment details in respect of a contributory pension scheme towards which the church pays 8% and the staff member 5%. Illustration 1 is the situation where the church pays its contribution to the staff member to forward, with his own contribution, to the provider. Illustration 2 refers to the same percentage contributions, but arranged under a salary sacrifice scheme.

#### *Illustration 1 – contribution paid gross to staff member (employer)*

1	2	3	4	5	6	7	8
Salary £	Additional 8%	Employer's NI threshold	Amount on which NI payable	Rate of employer's NI	Total NI payable	Tax payable on additional 8%	Total outlay (cols. 1 + 2 + 6)
20,000.00	1,600.00	7,072.00	14,528.00	13.8%	2,004.86	Nil	23,604.86

#### *Illustration 1 – contribution paid gross to staff member (employee)*

1	2	3	4	5	6	7	8
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Salary £	Additional 8%	Employee's NI threshold	Amount on which NI payable	Rate of employee's NI	Total NI payable	Tax payable on additional 8%	Total outlay (cols. 1 + 2 + 6)
20,000.00	1,600.00	7,228.00	14,372.00	12%	1,724.64	Nil	

**Illustration 2 – contribution paid to staff member under salary sacrifice scheme (employer)**

1	2	3	4	5	6	7	8
Salary £ (Salary minus 5%)	13% paid direct to provider	Employer's NI threshold	Amount on which NI payable	Rate of employer's NI	Total NI payable	Tax payable on additional 8%	Total outlay (cols. 1 + 2 + 6)
19,000.00	2,600.00	7,072.00	11,928.00	13.8%	1,646.06	Nil	23,246.06

**Illustration 2 – contribution paid to staff member under salary sacrifice scheme (employee)**

1	2	3	4	5	6	7	8
Salary £ (salary minus 5%)	13% paid direct to provider	Employee's NI threshold	Amount on which NI payable	Rate of employee's NI	Total NI payable	Tax payable on additional 8%	Total outlay (cols. 1 + 6)
19,000.00	-	7,228.00	13,372.00	12%	1,604.64	Nil	

From the above illustrations, it can be seen that the employer saves £358.80 per annum under a salary sacrifice scheme, and the employee saves £120.00, making a combined saving of £478.80 per annum. Where a church contributes to a pension policy for its staff, without any contribution from the staff member, and therefore no salary sacrifice is involved, there is still a saving in National Insurance if the contribution is paid direct to the provider, rather than to the staff member with his salary.

**Bike2Work Scheme**

Another possible use of salary sacrifice is in connection with the Bike2Work Scheme – a government-approved project aimed at reducing carbon emissions. If a staff member uses a bicycle for work purposes, the Bike2Work Scheme provides an opportunity for cycles and ancillary equipment to be purchased by means of salary sacrifice, on favourable terms. Details of the procedures and savings involved are available on the Bike2Work Scheme web site. Churches are eligible for this Scheme.

**GIFT AID ISSUES**

**Gift Aid on cash collections**

From April 2013, charities will be able to claim Gift Aid on cash donations, without having to prove that the donors are taxpayers, the Chancellor of the Exchequer announced in his 2011 budget in March. This new provision will mean that churches will be able to claim Gift Aid on cash collections taken up during services, or gifts given via boxes fixed to walls. The maximum claimable will be £1,250 in any one year, which means that to qualify for the maximum, churches will need to be able to show that they have received cash income of at least £5,000 in that year. Charities will only qualify for Gift Aid on cash donations if they have been in existence for at least three years, and have a good tax compliance record.

**Missionary support by family members**

Considerable uncertainties still exist over the circumstances in which gifts for the support of individual missionaries can be Gift Aided.

As HMRC itself indicated to the FIEC on 19 May 2011: “Payments to a charity with the intention of those payments being applied for the support of missionaries and/or their mission work do not fall easily into the Gift Aid Scheme and can create grey areas. Consequently each case needs to be considered on its own merits having regard to the surrounding circumstances.”

This reply is almost an invitation to churches to discuss individual cases, with a view to clarifying whether in the detailed particular circumstances Gift Aid is eligible.

There are hundreds of possible slight variations in the nature of a missionary work and the relationships existing between donors and churches, donors and missionaries and missionaries and agency charities. Any of these variations, however slight, can confirm eligibility for Gift Aid, or can become disqualifying factors.

HMRC has recently clarified a number of circumstances affecting relatives desiring to support their family members engaged in missionary work. There is a general rule that family members cannot support their close relatives under Gift Aid. This rule exists because under charity law a donor is not allowed to derive personal benefits from gifts he or she makes to charity. A benefit to a close relative, known in law as a "connected person," is viewed in just the same way as if the donor himself or herself was gaining the benefit. Hence, if a church opens a fund for the support of a named missionary, that missionary's close family members will not be able to make donations to it under Gift Aid.

HMRC has now gone further than this. In the case of a church which opened a fund for the support of three different named missionaries, HMRC has ruled that the close family of the missionaries cannot give under Gift Aid to that fund, even though the total amount of money being forwarded to the missionaries to whom they are not related is more than the amount of the gift they would be making to the fund. HMRC has concluded either that any single gift to a joint fund is deemed to be divided between the beneficiaries in the same proportion as the total fund is itself divided; or that the intention of the relatives in making the gift is to support their own family member and therefore the whole of their gift is to be regarded as for the benefit of their family member. Whichever of these conclusions is drawn, the use of the Gift Aid Scheme is not permitted.

#### **Anti-avoidance legislation**

New provisions aimed at preventing abuse of the financial advantages available within the charity system in the UK have been included in the Finance Bill 2011. If, as expected, the Finance Bill is enacted in the next few weeks, the new arrangements will apply from the current tax year 2011-2012. The new provisions, which are known as the tainted charity donations rules, will replace previous controversial provisions, known as the substantial donor legislation, originally included in the Finance Act 2006, which placed a huge procedural and bureaucratic burden on charities. Following an outcry from charities, the previous arrangements have been effectively on hold for the past two years while a better solution to the problem of avoidance was sought.

The tainted charity donation rules will put the focus on the donor, rather than on the charity, and will be much simpler to operate and monitor. Churches will be relieved that they will not have any bureaucratic responsibilities additional to the ordinary Gift Aid procedures. More details on how the new arrangements will affect major donors will be given in future issues of *Green Pages*.

#### **An opportunity for those earning between £100,000 and £114,950**

The reduction in personal tax allowances available to people earning £100,000 or more is not entirely bad news. Because of the way the reductions are configured, those earning between £100,000 and £114,950 are effectively 60% taxpayers, and in those circumstances a net gift of £500 under Gift Aid would be worth £1,250 to a charity.

## **GOVERNANCE ISSUES**

### **Charity Commission**

The Charity Commission has indicated that, to save costs, it intends to operate all its services on-line by 2012. Churches which are registered charities are advised to begin immediately to familiarise themselves with the Commission's on-line systems, so that they will be ready to engage with the on-line systems by the time the hard copy procedures are discontinued.

### **Scottish Charitable Incorporated Organisations (SCIOs)**

While the launch of a new charitable entity known as a Charitable Incorporated Organisation (CIO) is still awaited in England and Wales, a similar body has already come into being in Scotland. Known as a Scottish Charitable Incorporated Organisation (SCIO), the new entity will be regulated by the Office of the Scottish Charity Regulator (OSCR) and will be able to own property, enter into contracts, employ staff and sue and be sued in its own name. SCIOs will be governed by the Charity and Trustee Investment (Scotland) Act 2005, the Scottish Charitable Incorporated Organisation Regulations 2011 and the Scottish Charitable Incorporated Organisations (Removal from the Register and Dissolution) Regulations 2011. Before constituting any SCIOs, churches in Scotland are urged to seek competent advice as to whether a SCIO is an appropriate vehicle for all or part of a church's governance structure.

### **Church premises registered as places of worship**

Churches in England and Wales which apply for their premises to be registered as places of worship under the Places of Worship Registration Act 1855 have to submit a fairly detailed sketch plan of the room lay-out of their premises, indicating the use of each room. Registration under the 1855 Act is required of all churches applying for registration for marriages.

When a church undertakes major alterations to its premises, such as building an extension or carrying out internal improvements which alter the room lay-out, the church needs to inform the Registrar-General, which can be done via the local Register Office, of the revised lay-out plan, as the configuration of the building forms part of the registration.

It is also worth noting that, as far as independent churches are concerned, only those registered under the Place of Worship Registration Act 1855 are entitled to exemption from business rates. Churches are therefore advised to check that they are registered.

## PROPERTY ISSUES

### Surface water charges

Several water companies have responded to the opportunity provided by the Flood and Water Management Act 2010 to introduce a scheme of concessionary surface water drainage charges for “community premises,” a category which includes churches.

United Utilities and Northumbrian Water have already launched concessionary schemes, and Severn Trent Water will shortly be consulting all its customers over the details of a proposed scheme. However, if a concessionary scheme is introduced, churches served by Severn Trent Water will not necessarily be in a better position than they are currently. Up to now, churches served by Severn Trent Water have not been charged for surface water drainage as charges have been based on rateable value. Churches registered as places of worship do not have a rateable value, and so the charge has been zero.

### Community Infrastructure Levy

The Department for Communities and Local Government (DCLG) has published (12.05.11) details of the relief from the Community Infrastructure Levy (CIL) which will be available to charities. The CIL is a “tax” which local authorities have had the discretion to impose in respect of planning applications for development in their local authority area.

Under the announced provisions, mandatory or discretionary relief from this “tax” will be available for charities in different circumstances.

To qualify for any relief, the claimant must be a charitable institution, must own a material interest in the relevant land, and must own this interest either solely or, if jointly, only with other charitable institutions.

To qualify for mandatory relief, the chargeable development must be used wholly or mainly for charitable purposes and must be occupied by, or under the control of, a charitable institution. Both registered and excepted charities are specifically included within the definition of “charitable institutions.”

Charities will only qualify for discretionary relief if the local authority for the area in which the chargeable development is situated has published the fact that discretionary relief is available. The majority of the chargeable development must be held by the claimant, or by the claimant and other charitable institutions, as an investment whose profits will be applied for charitable purposes. The chargeable development will not qualify for relief if used by the charitable institution for ineligible trading activities. Claims for relief must be submitted on official forms and the decision by the local authority must have been notified to the claimant before the chargeable development can begin. If work starts prior to the notification having been received, the relief will lapse.

There is a seven-year “claw-back” period, which means that if the chargeable development ceases to qualify for relief, for whatever reason, within seven years of the commencement date of the work, the original Community Infrastructure Levy is immediately payable.

Full details of the provisions can be found on pages 6-15 of a 36-page document, entitled *Community Infrastructure Levy Relief Information* Document, which can be downloaded from the DCLG web site ([www.communities.gov.uk](http://www.communities.gov.uk)).

## INHERITANCE TAX

Charities are expected to benefit significantly from changes to Inheritance Tax rules announced by the Chancellor in the March 2011 Budget.

Inheritance Tax is currently payable at 40% on all but the first £325,000 of a deceased person’s estate, less any legacies left to charities.

However, in respect of deaths after 5 April 2012, where a will has left at least 10 per cent of the value of an estate to charity, Inheritance Tax will only be charged at 36% on the rest of the taxable estate.

The following table, based on an estate of £800,000 of which £80,000 is already willed to a charity, shows the difference which this new concession makes:

	Before 05.04.2012	After 05.04.2012
	£	£
Amount of estate	800,000	800,000
Tax-exempt	325,000	325,000

Charity legacy	80,000	80,000
Taxable estate	395,000	395,000
Tax payable at 40%	158,000	
Tax payable at 36%		142,200
Legacies to family and friends	562,000	577,800

As the above grid shows, those whose wills already include legacies to charities amounting to at least 10% of the estate will find that the new concession reduces the amount of tax payable, unless the whole estate above the £325,000 threshold is willed to charities. In the example in the above grid, where a will gives £80,000 of an estate of £800,000 to charities, there is a tax saving of £15,800, which can be added to the legacies to family and friends, or willed to a charity.

The grid below shows the position of a person who currently has a will which leaves nothing to charities. If, on the basis of the new arrangements, a testator decides to change his will in order to leave a sum to charity, he will find that just under 60% of his bequest is met by the taxman. The precise position is as follows:

	Before 05.04.2012	After 05.04.2012
	£	£
Amount of estate	800,000	800,000
Tax-exempt	325,000	325,000
Charity legacy	-	80,000
Taxable estate	475,000	395,000
Tax payable at 40%	190,000	-
Tax payable at 36%	-	142,200
Legacies to family and friends	610,000	577,800

The new provisions are likely to encourage people to leave money to charities in their wills who might not previously have done so.

#### BEWARE OF INTELLECTUAL PROPERTY RIGHT SCAMS

The Director of Trade Marks and Designs at the Intellectual Property Office (IPO) has warned organisations to be on guard against a scam which is currently defrauding a large number of organisations of relatively small sums of money.

The fraudsters approach organisations with unsolicited renewal reminders in connection with various alleged requirements to register intellectual property rights, or to return or file alleged official documents. Everything looks official and a fee is payable, and is often paid by the organisation concerned because the demand appears to be plausible and a relatively small sum.

Churches are probably not likely to be the main targets of such a scam, as the various licences issued by the IPO are not normally those needed by churches, but it does no harm to be on the alert. In a similar scam a few years ago, a number of churches were taken in by fraudsters who contacted them to sell advertising space in a non-existent local publication. Fraudsters of this type always appear to be friendly, professional and genuine. A good rule is never to do immediate business with cold callers.

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