

PRACTICAL GUIDE

As a Church Do We Need to Register with the Charity Commission?

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1.0 Registration of your church with the Charity Commission – why bother?

Many churches ask us whether they must register as a charity with the Charity Commission. Following very recent changes in tax law, it is now essential that churches that are not registered as charities do so immediately, if the law states that they must be registered. If your Church should register with the Charity Commission (“the CC”) but has not done so the church’s entitlement to Gift Aid may be in jeopardy. You may also lose out on other tax advantages offered to charities.

2.0 Entitlement to Gift Aid and all other tax reliefs as a charity

The rules as to the requirements for a charity to qualify as a charity for Gift Aid and all other tax reliefs for charities have changed as result of the Finance Act 2010 Schedule 6. With effect from April 2010 a new definition for tax purposes of charity has been introduced. The new provision says that a charity must:-

1. be established for charitable purposes only, and
2. meet the jurisdiction condition, and
3. meet the registration condition, and
4. meet the management condition.

This paper will focus primarily on the registration condition 3 but it is useful to explain a little of the other conditions 1, 2 and 4 also.

2.1 Charitable purposes

Condition 1 requiring exclusively charitable purposes is not new and means that the organisation must be established for the public benefit and for one or more of the purposes set out in section 3 of the Charities Act 2011 as being charitable. These purposes include numerous categories, but as far as churches are concerned the relevant purposes will be mainly the advancement of religion, education and the relief of poverty. All of these will be charitable but it has to be remembered always that, no matter what, the purposes the charity must also satisfy the public benefit requirement.

2.2 Jurisdiction condition

Condition 2 “the jurisdiction requirement” means simply that the charity must be subject to the control of the High Court in England and Wales, or the Court of Session in Scotland or the High Court in Northern Ireland. In general, churches situated in England or Wales will be subject to the control of the High Court in England and Wales.

2.3 Management condition

Condition 4 “the management condition” is a new requirement and means that those who are managers of the charity must be “fit and proper persons to be managers” of the charity. There is detailed guidance in HMRC’s website (gov.uk) as to what they regard as a “fit and proper person”. HMRC say “HMRC assumes that all people appointed by charities are fit and proper persons unless they hold information to show otherwise. Provided charities take appropriate steps on appointing personnel then they may assume that they meet the management condition at all times unless, exceptionally, they are challenged by HMRC”.

HMRC go on to indicate factors which may lead to HMRC deciding that a manager is not a fit and proper person, including individuals:-

- with a history of tax fraud, or
- with a history of other fraudulent behaviour, or
- known by HMRC to be involved in attacks against or abuse of tax repayment systems, or
- who are barred from acting as a charity trustee by the CC or who are disqualified from acting as a director of a company, or
- who have been involved in tax avoidance schemes featuring charitable reliefs.

Even if an individual is regarded by HMRC as not being a fit and proper person the charity will not necessarily lose tax relief if the manager concerned has no ability to influence the charitable purposes of the charity or the application of its funds, or for other reasons it is just and reasonable to treat the charity as having met the management condition during the particular manager's period of office.

It does appear that it will be fairly rare for HMRC to treat the management condition as not complied with.

As to who is to be classed as a "manager" the term is defined as "the persons having the general control and management" of the charity. It includes the trustees and directors of charitable companies and "any other persons having general control and management over the running of the charity or the application of its assets." It could include the Treasurer and Secretary and other members of any management committee who are not actually trustees or directors. In larger charities it could include an employee, such as the Chief Executive, who is able to determine how a significant proportion of the charity's funds are expended.

2.4 Registration condition

Turning now to Condition 3 "the registration condition" above, the effect is that if the law requires the charity to be registered with the CC or with the equivalent body in Scotland or Northern Ireland then it must have been registered with them. If it has not been so registered then for the purposes of Gift Aid it may not be treated as a charity. This requirement extends with effect from the beginning of April 2012 to other taxes including income tax generally, inheritance tax, capital gains tax, stamp duty, corporation tax and value added tax.

It is therefore important that any church in England and Wales claiming Gift Aid or having income or capital gains should be registered urgently with the CC if it should be registered and has not been. If it fails to do so HMRC would be in a position to refuse Gift Aid repayments of tax and the charity will be liable to other taxes.

3.0 When should a church register with the Charity Commission?

This question is important in itself, since churches will want to comply with the law in any event, but it is also critical to decide whether a church will qualify for Gift Aid now and it is important in relation to all the other taxes from April 2012 (see section 5 below). The basic rule under the Charities Act 2011 (Section 30(2)) is that a Charity with an income of more than £5,000 in a year must be registered with the CC. However, the sudden introduction of this basic rule as a universal one would have caused a flood of applications for registration all at once, which the CC would not have been able to cope with and so, the requirement in relation to many churches has been phased in so that larger charities have been due to register before smaller ones. Prior to January 2009 there were many charities known as "excepted charities" which were not required to register with the CC nor submit annual returns because they were under the umbrella of an associated body such as the Church of England, the Baptist Union or the Fellowship of Independent Evangelical Churches. Since then the regulatory policy has been that these churches having "excepted" status should now be registered

with the CC subject only to the church having an income in excess of £5,000 in a year regardless of whether it has an umbrella body associated with it.

Nevertheless, “excepted” status lingers on in that a church which is associated with one of the umbrella bodies and has an income of less than £100,000 per annum should not register with the CC. This special “excepted” status was due to come to an end at the end of March 2021, but this was extended to the end of March 2031. There is a list of the umbrella bodies from which “excepted” status arises in the Appendix to this paper. If a church is not associated with any of these umbrella bodies then it cannot be excepted and it should register with the CC unless its income is less than £5,000 in a year.

If an excepted church converts to a Charitable Incorporated Organisation (see 7.4 below), it will no longer be excepted and will be registered.

If a church has an exceptional increase in income which pushes it over the £100,000 threshold because, for example, of a legacy, the CC may issue, if the church makes an application to the CC, a determination that the church may retain its “excepted” status. The church would need to show that its projected income will remain below £100,000 and is not rising close to £100,000 in any event regardless of the exceptional increase.

4.0 What if a church is not liable to register with the Charity Commission and is claiming Gift Aid repayments or other reliefs?

If a church is not obliged to register with the CC because it is excepted and has an income of less than £100,000 or is not excepted but has an income of less than £5,000, then in order to be recognised by HMRC for Gift Aid repayments and other tax reliefs it must apply online on the HMRC gov.uk website for recognition. If the church is not required to be registered with the CC but is already registered with HMRC for Gift Aid, they will not need to. However, if any of the ‘officials’ or bank account changes, they would then need to complete ChV1 (Variations form): <http://www.hmrc.gov.uk/charities/chv1.pdf>.

5.0 Other tax advantages

There are a large number of tax reliefs that are available to churches and those who give to churches. These are covered by the law which came into effect in April 2012:

5.1 Income tax

This affects gifts to charity under Gift Aid, including repayment of basic rate tax to the church, and repayment of any higher and additional rate tax to the donor; donations under the Payroll Giving Scheme and donor reliefs for gifts of qualifying shares, securities and property to the church.

5.2 Capital gains tax

It will affect donor exemption for gifts of any asset chargeable to capital gains tax to the church.

5.3 Corporation tax

This would affect qualifying charitable donations made by a company and corporation tax exemption for gifts of assets chargeable to corporation tax to the church.

5.4 Value added tax

Churches would lose their exemption from paying VAT on property rents; zero-rating of the construction of new buildings and independent annexes; reduced rate of VAT for fuel and power costs and zero-rating for advertising.

5.5 Inheritance tax

This includes the new reduced rate of inheritance tax applying to estates where 10% or more of the 'net estate' is left to 'charity' and exemption from inheritance tax for legacies to the church.

5.6 Stamp Duty Taxes

Churches would lose their exemption from stamp duty on purchase of a property by the church.

6.0 The Registered Place of Worship exception

Some churches may have refrained from registration with the CC because of one particular exception which provides that church premises registered with the appropriate local authority under the Places of Worship Registration Act 1855 as a Place of Worship need not register with the CC. This exception is commonly not fully understood and is thought of as much wider than it actually is. It applies only to the Place of Worship itself. It does not apply to the charitable funds held in connection with the Place of Worship. Thus, if the church has an income in excess of £5,000 in a year and further is not associated with any of the umbrella bodies listed in the Appendix below, it should register with the CC, even if the building is also registered with the local authority as a Place of Worship. For information on registering a place of worship, see Church Growth Trust's briefing paper: "Place of worship and marriage registration".

7.0 Registration with the Charity Commission

A church which ought to be registered with the CC will need to formally establish a legal structure which can be registered. An appropriate legal structure can take one of four forms.

7.1 Unincorporated Association

Firstly, there is the unincorporated association which is established by a written constitution and is adopted by the founding members. It would contain rules for the objects of the church (commonly the advancement of the Christian faith in accordance with a statement of faith) and would make provision for leadership, admission to membership, administrative powers, trustee remuneration (if required), meetings of the leadership and members, dissolution and amendment of the rules. This form of legal structure is suitable for an organisation (which could be a church) whose chief needs are to have a mechanism for decision making and a membership, as well as a group who lead. It is not so suitable for holding property such as the church premises nor for undertaking significant liabilities including the employment of a number of staff.

7.2 Trust

The second form of legal structure which is available is a trust which is established by trustees executing a deed. The deed would set out objects in the same way as a constitution and it would provide for the appointment and retirement of trustees, administrative powers and so forth, but would not commonly provide for a membership and meetings of members as the concept of membership does not sit easily in a trust of this kind. The trustees normally have responsibility for all the assets of the trust and so it is not appropriate for their authority

to be shared or even overridden by other parties (i.e. the members of the church), in relation to the assets for which they are responsible.

7.3 Charitable Company

The third form of legal structure available is the charitable company limited by guarantee which would have articles of association. These would provide for the same matters as a constitution but the main advantage would be that the members of the company and the directors (having the same responsibility as trustees in a trust) would have the protection of limited liability as far as the claims of creditors of the company are concerned. This form of structure not only has provision for membership and decision making in the same way as a constitution but also can own property in its own name and protects the directors and members where significant liabilities are undertaken by the church such as building works or the employment of staff.

7.4 Charitable Incorporated Organisation

The fourth legal structure known as a Charitable Incorporated Organisation or CIO for short has been available in England and Wales since May 2012 and was available in Scotland before that. It has the limited liability advantage of the company mentioned above but will be registered only with the CC and, unlike a company will not be registered with the Registrar of Companies so it will not be subject to company legislation, including there being no requirement to file accounts or other records with Companies House.

There are two types of CIO, namely an Association CIO and a Foundation CIO and the Charity Commission have available on their website at gov.uk model constitutions for each.

The Association CIO is designed for charities which have a membership which is wider than the trustees and which will have voting rights. The Foundation CIO is for charities whose only voting members are the charity trustees; although in these cases there can be alongside the CIO a set of rules making provision for the regulation of the church fellowship in relation to such matters as church membership and the appointment of church leaders. The Foundation CIO is more usually the appropriate legal structure for churches rather than the Association CIO model, because the voting power rests with the trustees alone which is the normal governance structure for independent churches.

Church Growth Trust have adapted the Charity Commission model or template for the Foundation CIO so as to be appropriate for independent churches (although there is no reason why any church may not adapt the Charity Commission model to suit their own requirements) and this is available online at www.churchgrowth.org.uk/model-cios/. However it has to be said that a bespoke constitution form of CIO may take longer to be accepted by the Commission for registration purposes.

7.5 What if your church already has a legal structure?

It may well be that your church already has some form of constitution which could well be suitable for registration with the CC but it would be advisable to make sure that it contains all the provisions which should be covered before applying. There are procedures for converting an existing charity to a CIO and more about this can be found in our briefing paper "Charitable Incorporated Organisations for Church Charities".

Your church may also already have a trust deed which could be registered with the CC, but again it would be advisable to check first that it contains all that is needed from a legal and CC point of view. It is often the case, for example, that an older form of trust deed relates only to the church buildings and so it is necessary to establish a trust deed or charitable

company or CIO for the congregational funds and other assets of the church. We would be happy to advise further on such matters.

There is helpful guidance (CC22a and CC22b) on appropriate structures for charities on the Charity Commission gov.uk website.

8.0 Model Documents

Some of the umbrella bodies referred to in the Appendix such as the Baptist Union, Grace Baptist Churches and the Fellowship of Independent Evangelical Churches have model documents for some of these structures which they make available. The CC also has model documents for these structures on their website, but these are not in all cases particularly suited to churches and need adaptation. The Church of England, the Church in Wales, the Methodist Conference and the United Reformed Church have statutory forms of model documents for registration purposes.

9.0 Conclusion

Although this briefing paper is not intended to provide any detailed guidance on the formation and registration with the Charity Commission of church charities, we will be happy to give further help on this upon request. We would be happy to recommend you to the appropriate advisers to help with registration. Our main concern in this paper is to alert churches so that they do not miss out on Gift Aid and other tax reliefs for want of registration with the CC.

Appendix – List of Excepted Church Bodies

Baptist Union of Great Britain and Baptist Union of Wales
Church in Wales
Church of England
Congregational Federation
Calvinistic Methodist or Presbyterian Church in Wales
Evangelical Fellowship of Congregational Churches
Fellowship of Independent Evangelical Churches
General Assembly of Unitarian and Free Christian Churches
Grace Baptist Trust Corporation
Methodist Church
General Assembly of Unitarian and Free Christian Churches
Religious Society of Friends
Strict and Particular Baptists
Union of Welsh Independents
United Reformed Church

Contact Details:

For general advice on charity registration:

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