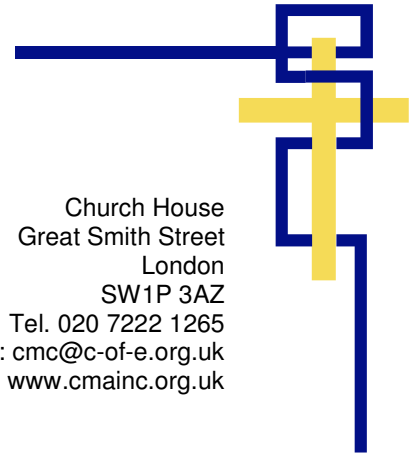


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INTRODUCTION

In view of the fact that last week saw the State Opening and the Queen's Speech, the revised timetable for the implementation of the Charities Act 2006 and the launch of the Charity Commission's Faith and Social Cohesion Unit, we thought that it might be worthwhile to send out a supplementary Circular.

Perhaps the most important item of news for churches in England and Wales is that *the Heritage Protection Bill will be introduced as a draft* – which means that legislation to implement the changes proposed in the White Paper will not now happen until Session 2008–09.

THE QUEEN'S SPEECH

Following are the measures and proposals 'announced in the Queen's Speech' that may be of interest to the voluntary sector. It should be noted that some of them were not actually mentioned in the Speech itself (for reasons known only to the Government business managers) but were posted on the No 10 website.

- **Education and Skills Bill:** to introduce a requirement to remain in education or training beyond the current statutory school-leaving age and to implement the Leitch recommendations on adult skills, principally in respect of new duties on the Learning and Skills Council to secure the proper provision of courses for over-19s.
- **Housing and Regeneration Bill:** to create a Homes and Communities Agency and reform social housing and social housing regulation to promote better services for tenants
- **Planning Reform Bill:** to implement proposals in the May 2007 Planning White Paper to streamline and improve the planning regime, to introduce a single consents regime for major infrastructure projects and to establish an Independent Infrastructure Planning Commission. It is assumed that this Bill will also establish the proposed 'planning charge'.
- **Human Fertilisation and Embryology Bill:** to provide that the creation and use of all human embryos outside the body (whatever the process used in their creation) are subject to regulation; to ban the selection of the sex of offspring for non-medical reasons; to recognise same-sex couples as legal parents of children conceived through the use of donated sperm, eggs or embryos; to change the restrictions on the use of HFEA-collected data to allow appropriate follow-up research; to increase the scope of legitimate embryo research activities.
- **Children and Young Persons Bill:** to reform the statutory framework for the care system, to ensure that children and young people receive high quality care and support and to drive improvements in the delivery of services focused on the needs of the child.
- **Employment Bill** (not mentioned in the Speech): to simplify, clarify and strengthen the enforcement regime for key aspects of employment law and improve its effectiveness; to repeal the statutory dispute resolution procedures and pave the way for implementation of a package of replacement measures to encourage early informal resolution; to clarify and strengthen the enforcement framework for the National Minimum Wage and employment agency standards; and to ensure compliance with the European Court of Human Rights judgment in *Aslef v UK* and clarify the rights of trades unions to determine their membership.

- **National Insurance Contributions Bill** (not mentioned in the Speech): to raise the Upper Earnings Threshold for National Insurance Contributions to align with the higher rate threshold for income tax and introduce the Upper Accruals Point for the State Second Pension in 2009.
- **Pensions Bill**: to enact the remainder of the pensions reform package set out in the May 2006 White Paper, *Security in retirement: towards a new pension system*, including provision for a new scheme of personal accounts and a minimum employer contribution.

In addition, there were also proposals that will not result in immediate legislation:

- **Work-life balance**: proposals to extend the right to request flexible working [see below].
- **Constitutional renewal**: a draft Bill on the proposals in the White Paper *Governance of Britain*.
- **Heritage protection**: a draft Bill (not mentioned in the Speech) to put in place a unified heritage protection system, to remove the distinctions between different designation regimes (listing, scheduling, registering), to devolve terrestrial designation decisions on assets in England from the Secretary of State to English Heritage, and to unify consents for works to terrestrial assets which will be administered by Local Authorities in England and in Wales by Local Authorities and Welsh Ministers as appropriate.

[Source: 10 Downing Street – 6 November 2007]

Link: <http://www.number-10.gov.uk/output/Page13707.asp>

CHARITIES AND CHARITY LAW

Charities Act 2006: revised timetable for implementation

The Office of the Third Sector in the Cabinet Office has published an updated timetable for implementation of the Charities Act 2006 and the fulfilment of other commitments made during its passage through Parliament. Some of the key measures in the Act will require consultation and secondary legislation or guidance before they can be commenced. For example, the new definition of charity, and the public benefit test, will not be brought into force until there is an accessible appeal right through the Charity Tribunal, and the Charity Commission has published its final guidance on the operation of the public benefit requirement having consulted on its draft guidance, and taken into account feedback from the consultation.

First Commencement Order – February 2007

These provisions came into force on 27 February 2007, unless otherwise specified below. The main provisions that were commenced by this Order were:

- The new Charity Commission, its objectives, functions and duties (*sections 6 and 7, schedules 1 and 2*).
- The requirement for the Commission to develop guidance and consult on the public benefit test (*section 4*).
- Interim changes to the registration threshold for small charities – which was followed by an order that increased the registration threshold to £5,000 annual income from 23 April 2007 (*section 10*).
- The relaxation of publicity requirements relating to schemes (*section 22*).
- The participation of Scottish and Northern Irish charities in Common Investment and Deposit Funds (*section 23*).
- Increases to the audit thresholds for unincorporated and incorporated charities for financial years beginning on or after 27 February 2007 (*sections 28 and 32*).
- The power for the Commission to determine the membership of a charity, and the power for the Commission to enter premises and seize documents under a warrant (*sections 25 and 26*).
- Changes to the restrictions on mortgages of charity land (*section 27*).
- Waiver of trustee's disqualification and the power for the Commission to relieve trustees and auditors from liability for breach of trust or duty (*sections 35 and 38*).
- The ability for charities to purchase trustee indemnity insurance (*section 39*).

- The power for unincorporated charities to modify powers or procedures (*section 42*).
- The reserve power to control fundraising by charitable institutions (*section 69*).
- Powers for Secretaries of State and the Minister for the Cabinet Office to give financial assistance to charitable, philanthropic or benevolent organisations from 1 April 2007, along with a duty to report annually to Parliament. An equivalent power for the National Assembly for Wales from 27 February 2007 and duty to publish an annual report (*sections 70 and 71*).

Second Commencement Order – November 2007

The main provisions that will be commenced by this Order are:

- Provisions relating to mergers of charities (*section 44*) (expected to be commenced in November 2007).
- Statements indicating benefits for charitable institutions, professional fundraisers, and commercial participators (*sections 67 and 68*) (expected to be commenced from 1 January 2008).

Third Commencement Order – first quarter of 2008

- Provisions relating to audit and accounting for charities, including group accounts and changes to the accounting regime for small charitable companies (*sections 29, 30, 31, 33, and an order under section 77, and schedule 6*). Following public consultation on the draft order to be made under section 77, and the draft Charities (Accounts and Reports) Regulations, the OTS will publish a summary of responses and make any necessary changes to the draft Order and Regulations before they are laid before Parliament early in 2008 (expected to come into force in late March 2008).
- The new definition of charity and the public benefit requirement (*sections 1, 2, 3, and 5*). These provisions are expected to come into force in late March 2008, once the Charity Commission has published its final high level guidance, has begun consultations on sub-sectoral guidance and the Charity Tribunal is established.
- The Charity Tribunal (*section 8 and schedules 3 and 4*). The Tribunal is expected to be established in February 2008, when the relevant provisions of the Charities Act 2006 will be commenced.
- New powers for the Charity Commission – to remove or suspend trustees from membership of a charity, to give specific directions for the protection of charity property, to direct the application of charity property, and to give advice and guidance (*sections 19, 20, 21 and 24*) (expected to be commenced in February 2008).
- Remuneration of trustees providing services to a charity (*sections 36 and 37*) (expected to be commenced in February 2008).

- Powers for unincorporated charities to transfer all property, to replace purposes or to spend capital (*sections 40, 41 and 43*) (expected to be commenced in February 2008).
- Changes to Cy-Près occasions and Schemes (*sections 15 to 18*) (expected to be commenced in February 2008).

Fourth Commencement Order – summer 2008

- The Charitable Incorporated Organisation (CIO) (*section 34 and schedule 7*). The OTS and the Charity Commission will publish a joint consultation on the draft regulations and model constitutions later in 2007 (expected to be commenced in summer 2008).
- Changes for ‘excepted’ charities (*parts of section 9*). From 1 October 2008, existing excepted charities with an annual income exceeding £100,000 will be required to register with the Charity Commission.

Exempt Charities

Provisions relating to exempt charities are expected to come into force in 2009. This will enable those charities, the proposed principal regulators of exempt charities, and the Charity Commission, time to prepare for the changes (*parts of section 9, sections 11 to 14, and schedule 5*).

While the Charity Commission is registering the large numbers of formerly excepted and exempt charities that it will have to register, the current law which enables the Charity Commission to exercise its discretion in relation to applications for voluntary registration will continue in force. Once those excepted and exempt charities that are required to register have been registered, the provision in the Act requiring the Commission to register charities that apply for voluntary registration will be commenced.

Licensing regime for public charitable collections

Before these provisions can come into force, work remains to be done in preparing and consulting on regulations and guidance. In addition the Charity Commission will need to equip itself to take on its new role in the scheme. Therefore it is not envisaged that the new licensing regime will come into force before 2009 (sections 45 to 66).

Other commitments

There were several other commitments made during the passage of the Charities Bill:

- Preparation of a *plain language guide to the Charities Act*, aimed particularly at small charities. This was developed jointly by the Office of the Third Sector and the Charity Commission and was published in May 2007. Hard copies are available by calling

0845 015 0010 and quoting URN 07/Z2 “Charities Act 2006: what trustees need to know”.

- *Consolidation of charity law* is a matter for the Law Commission; the OTS understands that preparatory work will be done during 2008 but the consolidation Act or Acts are unlikely to be enacted until Parliamentary session 2008–09.
- *The review of the financial thresholds in the Charities Acts*, to take place within a year of Royal Assent, will be worked up into proposals for public consultation that will be published later this year.
- The review of existing secondary legislation under the Charities Acts 1992 and 1993, with a view to identifying whether any existing regulations can be simplified, is in progress: any proposals for change will be put out for public consultation in 2008.
- A review of the impact of the public benefit requirement within three years of the public benefit requirement coming into force – no timetable yet.
- An evaluation of the impact of the Charities Act 2006 within five years of Royal Assent is required by section 73 – no timetable yet.

[Source: *Charity Commission Press Release* – 9 October 2007]

Charity Commission: Faith and Social Cohesion Unit

The Charity Commission has launched its new Faith and Social Cohesion Unit: a dedicated team to provide support and expert advice to faith-based charities. The Unit aims to strengthen the governance of faith-based charities, to identify and support organisations that could be but are not currently registered as charities and to improve both the Commission’s and society’s understanding of faith-based charities. The new unit will be headed by Ghulam Rasool, who has extensive experience of working with faith communities at the grass roots and has been actively involved in interfaith initiatives and religious education.

The Unit will lead the Commission's work with faith-based charities, building on the findings of a two-year programme of workshops with representatives from over 800 faith-based organisations across 11 different faiths. Events were held with Muslim, Jewish, Sikh, Hindu and Buddhist communities as well as special meetings with the UK’s smaller faiths such as Baha’i and Zoroastrianism, and a special multi-faith event for women only.

Apart from setting up the Unit itself, the key issues that the Commission is taking forward from the events are:

- a new Faith Advisory Group of external advisers from a range of faiths to advise the Commission on policy and issues affecting all faith-based charities;
- a new outreach programme, with face-to-face events providing advice and guidance and the opportunity to meet representatives from other faith-based charities; and

- improving the accessibility of essential Commission publications and guidance for charity trustees with English as a second language.

Dame Suzi Leather, Chair of the Charity Commission, said that the Unit would focus initially on Muslim organisations: not only was Islam Britain's second largest faith, but Muslim charities had frequently asked the Commission for help in strengthening their governance and tackling the lack of understanding and mistrust about their work within society.

[Source: *Charity Commission Press Release* – 9 October 2007]

EMPLOYMENT

Flexible working

In train of the Queen's Speech announcement on work-life balance, the Government announced that the Department for Business, Enterprise and Regulatory Reform has asked Sainsbury's Human Resources Director Imelda Walsh to lead an independent review to determine how the current right to request flexible working can be extended to parents of older children.

The latest statistics show that 91 per cent of workplaces that received requests in the last year approved all requests and that employers largely have positive views about promoting work-life balance. A formal consultation will be held after the results of the review are published, in order to gauge the views of business, employers, unions and other stakeholders but, in addition, their views will also be taken into account as part of the review process.

[Source: *DBERR News* – 6 November 2007]

ODDS AND ENDS

Soup runs

On Friday 2 November – the last day on which representations could be made – we learned from *Ekklesia* that there was a proposal out for consultation to include in the next London Local Authorities Bill a clause that would prohibit or restrict ‘the distribution of free refreshments’, aimed at ending soup runs. We understand that the content of the Bill is to be finalised at a meeting on 13 November. The Salvation Army is already aware of this proposal and has it firmly under review.

It is always possible that the proposal may be dropped. If it is not, the petition for the Bill will have to be deposited by 27 November (and, in practice, petitions for private bills are hardly ever deposited earlier than the last day for petitioning). The printed Bill will then have to be made available in print on and after 4 December.

It will be possible to petition *against* the Bill in due course, after it has been presented in whichever House it is to start its proceedings; but presentations do not take place until 21 January 2008 – and petitioning happens after that.

PROPERTY AND PLANNING

Advice on Flooding

There are two sources of guidance for churches that have suffered the effects of flooding or are in areas at risk of flooding.

London Diocesan Advisory Committee have produced a brief note on *Advice on Flooding in Churches*, available at

<http://www.london.anglican.org/resources/Blocks/8209/Advice%20on%20flooding%20in%20churches.pdf>. Inevitably, it is written from a Church of England perspective, but some of its advice is of general application.

English Heritage's 2004 technical Advice Note: *Flooding and Historic Buildings* can be found on their website at <http://www.english-heritage.org.uk/server/show/conWebDoc.2854>.

[Source: *Building Faith in our Future e-bulletin* – 7 November 2007]

Taxation

Retired clergy housing

On 22 August the Chairman wrote to Kitty Ussher, Economic Secretary to the Treasury, raising concerns about the taxation of living accommodation and shared appreciation mortgages for retired ministers of religion, in the light of the then Chancellor's announcement in the March 2007 Budget of amendments to the rules taxing non-cash benefits provided to retired former employees that, since 6 April 2006, have been taxable under Chapter 2 of Part 6 of the Income Tax (Earnings and Pensions) Act 2003.

HM Treasury replied on 28 October. On the provision of living accommodation for retired clergy, Ms Ussher said that

... it would be consistent with the Government's policy for greater consistency between the tax position of pensioners and employees on non-cash benefits if retired Ministers were to be exempt from tax on the living accommodation with which they are provided...

and suggested that the matter could best be pursued with the relevant Treasury officials. Colleagues at Church House are taking this forward.

On the provision of low-interest loans, such as the Church of England's CHARM scheme, however, the Treasury takes the view that there should be consistency in tax treatment as between serving employees and those who have retired. A subsidized loan facility would be taxable in the case of an employee: in the Treasury's view, therefore, there cannot be special treatment for those who have retired.