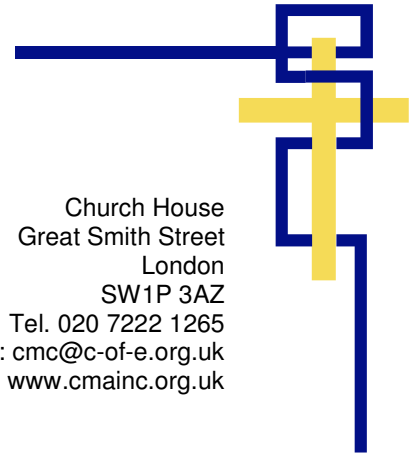


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**CMC CIRCULAR
2008/04 (29 February 2008)**

****** STOP PRESS ******

The draft supplementary guidance on public benefit and the advancement of religion was issued this morning and in due course we shall be making a response (whether in praise or damnation we don't yet know, because we haven't had a chance to digest it). No doubt individual members will be making their own submissions, but we should be very grateful to be copied in to those responses.

The document is available at:

<http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pbarsum.pdf>.

Responses are requested by 30 June 2008.

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Disclaimer

CMC is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though every care is taken to provide a service of high quality, neither CMC nor the Secretariat nor the Executive undertakes any liability for any error or omission in the information supplied.

It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

CHARITIES AND CHARITY LAW

Registration: online application service

The Charity Commission has launched a new online registration application service, initially for organisations applying with an approved governing document which the Commission has approved and agreed with an umbrella body for use by its members. It allows organisations to submit their charity application form electronically and, should they wish, also submit their governing document at the same time.

The online service is designed to be more flexible and easier to use than a manual form, guiding organisations through the application process with helpful information on hand at each stage. Applicants will also be able to save and return to their form, giving them the option to complete it over a period of time. Once submitted, the application will be considered for registration in the usual way.

For charities using an approved governing document the average registration time is 15 days. A key aim for the new service is to continue to reduce the time to register: the Commission is aiming for an average registration time of five working days or less by the end of 2008 for those organisations applying online.

[Source: *Charity Commission News* – 26 February 2008]

EMPLOYMENT

Organists

An employment tribunal has ruled that a church organist is an employee for the purpose of statutory employment rights. In a case involving the dismissal of an organist and choirmaster in the North of England, it was argued that the organist in question was self-employed so could not, therefore, have been unfairly dismissed.

According to Shiranikha Herbert's report of the case in the *Church Times*, the tribunal concluded that, given the amount of control over an organist exercised by an incumbent under the terms of Canon B20 (Of the musicians and music of the Church), an employment relationship existed. Canon B20(1) begins as follows:

In all churches and chapels, other than in cathedral or collegiate churches or chapels where the matter is governed by or dependent upon the statutes or customs of the same, the functions of appointing any organist, choirmaster (by whatever name called) or director of music, and of terminating the appointment of any organist, choirmaster or director of music, shall be exercisable by the minister with the agreement of the parochial church council...

The case will now proceed to a substantive hearing. The tribunal ordered that the case should be anonymised as *A v B and C*; and when we enquired of the Tribunals Service for a copy of the transcript of the decision it was not yet available.

How far this might apply to churches other than the Church of England is not at all clear, not least because the decisions of first-instance employment tribunals are not binding; however, Mark Mansell, an employment partner in Allen & Overy, was quoted in *The Times* as saying that, so far as churches were concerned 'there is a move away from treating people who work for the Church as people with a calling and towards treating them as a member of staff'.

[Sources: *The Times* – 20 February 2008; *Church Times* – 22 February 2008]

Employment law: compliance

Research carried out by the Church Urban Fund (CUF) suggests that voluntary organisations are often failing to comply with employment legislation. The research found widespread disregard of the Working Time (Amendment) Regulations 2007, the Health Act 2006, the Employment Equality (Age) Regulations 2006 and the Disability Discrimination Act.

The CUF has produced an HR pack entitled *Just Employment* which is intended as a comprehensive guide to employing volunteers and staff in faith-based projects. It has been drawn up by an employment specialist and will be updated annually. As well as guidance on recruiting and managing staff and volunteers it includes practical advice with case-studies and examples and a series of templates. Prospective users must register with the CUF site

before downloading the material and a donation is requested, proportionate to the size of the organisation – though a donation is not obligatory.

Given that the problems of employment in voluntary organisations are often generic to the sector rather than specific to particular institutions, the CUF pack might be well of use to churches other than the Church of England and to the wider voluntary sector as well.

[Source: *Church Times* – 22 February 2008]

Link to CUF site: <http://www.cuf.org.uk/>

Employment Equality (Age) Regulations: <http://www.opsi.gov.uk/si/si2006/20061031.htm>

Working Time Regulations: http://www.opsi.gov.uk/si/si2007/uksi_20072079_en_1

FUNDING

Professional charity fundraisers: guidance

The Cabinet Office has published draft guidance for professional charity fundraisers and retailers who raise money for charity through sales. From 1 April 2008, fundraisers who are paid to raise money will be required to state to potential donors how much of each donation will go to charity and what proportion will go towards their own wages. This will affect street, telephone and door-to-door collectors. Similarly, shops who donate a portion of the sale price on particular items to charity will be required to state explicitly the extent to which a charity will benefit.

Currently, professional fundraisers and commercial participators are required to make statements; but the new requirements are much clearer about what they must contain. To help professional fundraisers and commercial participators provide the information required by the law the guidance offers suggested template statements: for example, where the professional fund-raiser (an individual) is being paid an hourly rate:

I am a paid / professional fund-raiser working on behalf of <XXXX charity>. I am being paid an hourly rate of <<£xxx>> per hour. In all, I expect to be paid approximately <<£XXX>> for carrying out this programme of conversations with supporters like yourself throughout the UK across the whole of the year.

The Cabinet Office is inviting comments by **31 May 2008**.

[Source: *Cabinet Office News* – 21 February 2008]

Draft Guidance:

http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/third_sector/fundraising/draft_guidance_fundraising.pdf

IMMIGRATION

Accreditation of educational institutions, immigration and the points-based system

The Home Office and the Border and Immigration Agency are in the process of implementing a Points-Based System (PBS) for immigration. Students will be covered by Tier 4 of PBS, and will need to be sponsored by an educational institution that has a sponsor licence from the Border and Immigration Agency. Part of the package involves accreditation of education providers bringing international students into the UK to make sure that they are genuine. The BIA is therefore setting up a Sponsor Register of accredited institutions.

In order to be acceptable, an accreditation will need to cover such areas as teaching practices, legal and financial requirements, progress monitoring of students and any other specific criteria. For these purposes, accreditation will need to go beyond any approval to deliver a particular course and will involve a full institutional inspection.

Institutions which are subject to the system of reviews undertaken by any of the following will need to show that they have been inspected or audited by the appropriate body:

- Quality Assurance Agency for Higher Education (UK-wide)
- Ofsted (England)
- HM Inspectorate of Education (Scotland)
- Estyn (Wales)
- Education and Training Inspectorate (Northern Ireland)
- Independent Schools Inspectorate (ISI)

Institutions outside this system will need to show:

- that they hold valid accreditation from an accreditation body approved by the Border and Immigration Agency; *or*
- that they have passed an inspection by Ofsted.

Publicly-funded institutions will NOT be required to undergo any additional accreditation before they make an application to join the PBS Sponsor Register because they are already required to submit to public inspections by Ofsted Inspectorate and their devolved equivalents and (in the higher education sector) to institutional audits/reviews by the Quality Assurance Agency (QAA).

Privately-funded institutions (which will include the majority of theological and bible colleges, *even if* they are providing a course or courses that are accredited by publicly-funded institutions such as universities) will be required to obtain valid accreditation with one of the Agency-approved accreditation bodies. Some colleges may already submit

themselves voluntarily to accreditation by one of the Agency-approved accreditation bodies and will simply need to ensure their accreditation is valid at the time of their application and continues to be renewed;

The most appropriate accreditation bodies for the sector are:

- **The British Accreditation Council**, which offers a general accreditation service to cover a wide range of different educational establishments: see <http://www.the-bac.org/>; and
- **ASIC** (the Accreditation Service for International Colleges) which also offers a general accreditation service to cover a wide range of different educational establishments. <http://www.asic.org.uk/>.

For institutions that require accreditation, the costs will be set by the accreditation bodies. It is expected that accreditation will cost an average of **£4,000 for 4 years** (this may be slightly higher or lower depending on the accreditation body chosen and the size of the institution to be inspected).

There is a more comprehensive guide to T4 accreditation on the BIA/Home Office website at http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/pbsddocs/tier4/T4_accreditationqanda.pdf?view=Binary.

We should like to thank Joanne Laker of the Managed Migration Policy/Temporary Migration Team at the Border and Immigration Agency for her help in preparing this note.

NORTHERN IRELAND

All-Ireland charity regulation

The Northern Ireland Social Development Minister, Margaret Ritchie, has met Ministers Eamon O Cuiv and Pat Carey from the Department for Community Rural and Gaeltacht Affairs to discuss ways in which they can work together to regulate charities on both sides of the Border on an All-Ireland basis. Following her meeting, Ms Ritchie said that she and the Irish Ministers had agreed to continue working closely together to ensure that the processes and procedures arising out of the new legislation in the two jurisdictions would make practical sense for cross-border charities, while respecting the separate fiscal jurisdictions.

[Source: *NI Department for Social Development News Release – 27 February 2008*]

PROPERTY AND PLANNING

Housing and Regeneration Bill

The Charity Commission has taken the rather unusual step of making public its concerns that proposals in the Housing and Regeneration Bill currently before Parliament could have serious implications for charitable housing associations. There are 1400 charitable Registered Social Landlords (housing associations), making up two-thirds of the social landlords registered with the Housing Corporation.

In a briefing to all members of the Bill Committee, and other MPs with an interest in housing, the Commission has expressed concerns that proposed changes could undermine the independence of charities and force them into activities that could ultimately lead to the loss of their charitable status. Provisions in the Bill include establishing a new regulator with the power to set compulsory standards for providers of social housing. This could force a charity to engage in activity beyond its charitable objects, which would mean its purposes were no longer exclusively charitable and it could lose the financial and practical benefits of charitable status. Rosie Chapman, Director for Policy and Effectiveness for the Charity Commission, is quoted as saying that

independence is central to charitable status, and trustees must always be able to take decisions that are in the best interest of the charity and its beneficiaries. If proposals in the Bill undermine their ability to do this, it would have serious implications for charitable housing associations.

The Commission says that it is already in contact with the Department of Communities and Local Government on the issue, to ensure that the legislation will allow the new regulator to be effective without threatening the independence or charitable status of charitable housing associations.

The briefing to MPs is available on the Commission's Parliamentary microsite at <http://www.epolitix.com/EN/Forums/Charity+Commission/home.htm>

[Source: *Charity Commission News* – 12 February 2008]

SCOTLAND

OSCR: 'charitable purpose' and 'charitable'

OSCR and HMRC have issued a joint statement clarifying the requirement for 'definition clauses' (defining the meaning of the words 'charitable', 'charitable purpose' or 'charity') in constitutions of bodies on the Scottish Charity Register that also wish to seek tax relief from HMRC. The agreement reached between OSCR and HMRC was informed by the knowledge that there is very little divergence between the concept of what is 'charitable' etc in terms of the Charities and Trustee Investment (Scotland) Act 2005 and what is 'charitable' etc for the purposes of the Taxes Acts and the mutual desire to maintain that position going into the future. The objective of the agreement has been to arrive at an operational arrangement that has a minimum impact on Scottish charities.

HMRC and OSCR have therefore agreed as follows:

Not all charities on the Scottish Charity Register that have been established under Scots law need a definition of the terms 'charitable' or 'charitable purpose' to be included in their constitution in order to be able to meet the requirements of HMRC and qualify for tax reliefs. A definition clause is **not** needed if:

The terms 'charitable' or 'charitable purpose' are not used in the constitution; or

The constitution does not contain a reference to general 'charitable purposes', nor a dissolution clause which allows the distribution of assets for 'any charitable purpose'.

Any charities on the Scottish Charity Register that may have adopted a definition or interpretation clause published by OSCR prior to February 2008, that was different from those contained in this statement, do **not** need to change this in order to be able to benefit from tax relief

Scottish charities **already on the Register** and which are already registered with HMRC which do not have a 'definition clause' in their constitution will **not** be required by HMRC to change their constitutions in order to qualify for tax relief. (However, HMRC stresses that it would be good practice to make such a change if the constitution were updated for another reason).

Scottish charities to be entered **new** on the Register by OSCR (and that use the terms charitable etc in their draft constitutions), will be advised both by OSCR and HMRC that, should they at any point wish to claim tax relief, they will probably need to define the terms 'charitable' or 'charitable purpose' (where used) in a way acceptable to HMRC, by inserting the model definitions clause(s).

HMRC and OSCR wish to maintain the working practice of HMRC that entry on the Scottish Charity Register would, in the vast majority of cases, satisfy HMRC for the purposes of granting tax relief and that separate submission of a constitution to HMRC will not usually be necessary. OSCR will therefore bring to the attention of

HMRC any charities that are entered on the Register without a definition clause in the constitution, where exact drafting of the constitution would need this for HMRC purposes. (OSCR will also inform the relevant charity if this is the case). This will allow HMRC to make separate, individual assessments of these cases should these charities request tax relief.

Example definition clauses:

These clauses can be amended or adjusted as appropriate and necessary within the context of the exact drafting of the constitution concerned. What is to be achieved is a definition which **unambiguously** defines the terms 'charitable purpose', 'or 'charitable' in terms of the 2005 Act **as well** as the Tax legislation. Which one of the example clauses should be used depends on the drafting of the constitution.

To define the term 'charitable purpose':

'The expression 'charitable purpose' shall mean a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the applications of the Taxes Acts.'

To define the term 'charity' or 'charitable body', 'charitable institution', 'charitable organisation (etc):

“ 'Charitable body', 'charitable institution', 'charitable organisation [as applicable in the context of the constitution] and 'charity' shall mean a body on the Scottish Charity Register which is also regarded as a charity in relation to the application of the Taxes Acts.'

For further information on definition clauses see OSCR's Briefing Note: *'Use of the terms 'charitable' and 'charitable purposes' in constitutions of charities in the Scottish Charity Register'*.

[Source: *OSCR News* – 19 February 2008]

Link to Briefing Note: <http://www.oscr.org.uk/NewsItem.aspx?ID=cfe0172f-1d66-43b0-baaf-b1fb71149079>

TAXATION

Benefits in kind and expense payments

As mentioned in Circular 2008–3, HMRC issued a consultation paper on 13 December 2007 entitled *Including Benefits in Kind and Expense Payments in the Payroll: A Fresh Approach* which proposes, *inter alia*, to remove the £8,500 earnings threshold below which tax is not paid on benefits.

Earlier this week the Secretary attended a meeting between the Treasury, HMRC and the voluntary sector at which we voiced our concerns on the proposal. We were told, very firmly,

- that nothing in the paper was cast in stone; and
- that the proposals were not intended as a revenue-raising measure: they were a response to complaints from business about the complexities of administering the current P11D / P9D arrangements for dealing with benefits and expenses.

Various points were made on the voluntary sector side:

- that the proposals would bring into the net large numbers of voluntary organisations that were at present excluded from it;
- that there were particular problems regarding the payment of volunteers for organisation such as VSO;
- that there seemed in any case to be a lack of clarity about persons who were 'employed' and persons who were 'volunteers' (we cited the recent tribunal case about church organists mentioned above); and
- that the £8,500 threshold was, in essence, a helpful *de minimis* limit.

We also pointed out that small charities (which includes individual congregations) often have very limited technical resources to deal with even existing regulations and accounting requirements, let alone new ones.

It was clear that one of the underlying problems is that HMRC does not have any reliable data on any of this – to our surprise, the civil servants told us that no-one knows how many people in work are earning less than £8,500. Our contention is that the proposal will merely *shift* administrative burdens rather than reduce them. CMC undertook to give HMRC at least a ball-park figure for the number of congregations in the United Kingdom as an indication of the scale of the potential problem.

PAYE: filing on line and paying electronically

From 6 April 2009, all employers with 50 or more employees will have to file employee starting and leaving details and some pension information on line. This will be extended to employers with fewer than 50 employees from April 2011.

The details that will have to be sent on line are:

- P45 (1) – employee leaving details;
- P45 (3) – new employee details;
- P46 – an employee who starts with the employer who does not have a P45; and
- P46(Pen) – a new form that pension payers will send when an occupational pension or annuity starts: it will be introduced from April 2009 and will replace the existing pension notification forms P160 and PENNOT.

When an individual (irrespective of age) starts to receive a pension, the pension provider will have to send either a P45(3) or the new form P46(Pen).

HMRC has updated its Internet 'handbook': *Guide to filing PAYE forms online and paying electronically*. It includes the latest information about filing the Employer Annual Return and in-year forms P45 and P46 online.

For most employers, HMRC's much shorter guide, '[Do it online - Your guide to filing PAYE Returns and paying electronically](#)', will probably suffice, but it does not include how to register with HMRC for online filing or the things that employers need to think about when using an agent or payroll bureau. These issues are covered in the 'handbook'.

[Source: *HMRC What's New* – 5 and 13 February 2008]

Guidance: <http://www.hmrc.gov.uk/employers/doitonline/index1.htm>

PAYE: students

HMRC has issued a consultation paper on PAYE for students, in particular on the Form P38(S) process. Hitherto, this has allowed students who undertake holiday employment to be paid without deduction of tax in certain circumstances on the basis that they often do not use up their personal allowances during the tax year. However, it is felt that changing student work-patterns may mean that this is no longer appropriate; moreover, because the P38(S) is a paper form, it does not fit well with electronic payroll systems.

The deadline for responses is **16 May 2008**. They can be submitted on-line to studenttaxconsultation.payee@hmrc.gsi.gov.uk or sent to: Maggie Anderson, HM Revenue

& Customs, PAYE, SA & NICs Directorate, Room 1/40 100 Parliament Street, London SW1A 2BQ

[Source: *HMRC What's New* – 20 February 2008]

VAT: three year time-limit for VAT claims – *Fleming* and *Condé Nast*

HMRC has issued the following *Brief 07/08*:

The recent House of Lords decisions in the cases of *Michael Fleming (t/a Bodycraft) v HMRC* and *Condé Nast Publications Ltd v HMRC* disappplied the three-year time limit for input tax claims in respect of which the entitlement to deduct accrued before 1 May 1997. HMRC considers that the terms of the judgment also apply to claims to recover VAT overpaid or over-declared in accounting periods ending before 4 December 1996.

As a result claims may now be made for:

- output tax overpaid or over-declared in accounting periods ending before 4 December 1996; and
- input tax in respect of which the entitlement to deduct arose in accounting periods ending before 1 May 1997.

Claims must be submitted to:

HM Revenue & Customs, 'Fleming' Claims Team (Leeds), Queens Dock, Liverpool, Merseyside L74 4AA.

Telephone enquiries in relation to the submission of claims or to claims that have already been submitted to the Claims Team may be made on 0113 389 4432.

Claims relating to accounting periods ending on or after 4 December 1996 (for output tax) or 1 May 1997 (for input tax) are capped at three years.

Claims will now be paid, following verification, without the need to provide an undertaking to repay HMRC. Claimants who have had their claims paid on condition that they provide an undertaking to repay in the event that the House of Lords found in favour of HMRC, are released from those undertakings. No further action is required by claimants.

HMRC are still considering the full implications of the judgment and will make a further announcement in due course.

[Source: *HMRC What's New* – 20 February 2008]