

# Charity Registration for PCCs

Changes have been introduced by the Charities Act 2006 that will require all excepted charities and churches (not just in the Church of England) with a gross income in excess of £100,000 to register as a charity with the Charity Commission.

Religious charities are one of the oldest forms of charity. The repair of churches, for example, was recognised as a charitable purpose in the Preamble to the Charitable Uses Act of 1601 that came to form the basis of our modern charity law.

The 'advancement of religion' constituted one of the four heads of charity enumerated by Lord MacNaghten in the seminal case of *Income Tax Special Commissioners v. Pemsel* [1891] A.C. 531 at 583, and now comprises one of the thirteen heads of charitable purpose described in the Charities Act 2006 (s. 2(2)(c)).

Accordingly a Church of England parish or Parochial Church Council (PCC) has enjoyed all the tax reliefs (including of course, Gift Aid) that are appropriate to a charitable organisation with respect to its funds and property over many years and will continue to do so.

## PCC MEMBERS AS CHARITY TRUSTEES

Much of the property that once 'belonged' to a church is now held on trust for that church. A PCC is now precluded from acquiring any interest in land (other than a short lease of less than a year) or any personal property to be held on permanent trusts unless they have the permission of the Diocesan Board of Finance. Such property will vest in the DBF as *custodian trustee* with the PCC as the *managing trustee* (Parochial Church Councils (Powers) Measure 1956, s. 6; Incumbents and Churchwardens (Trust) Measure 1964, s.4). This ensures that there can be no dealings with the property without the involvement of the DBF. There may therefore be a number of ecclesiastical trusts not held by a PCC from which a church may receive a benefit and an income.

Nevertheless a PCC has a general power to acquire property for the spiritual benefit of the parish (Parochial Church Councils (Powers) Measure 1956, s. 5). Such funds and property held by a PCC for the benefit of the parish church, and of other churches within the parish (as for example team ministries with District Church Councils, etc. or new expressions of a church within a parish that have no buildings) of which it is the Council, have traditionally been regarded as charitable.

All members of a PCC are therefore in fact charity trustees with respect to such property and nothing has changed in this respect as a result of the Charities Act 2006. It is to these funds held by PCCs that the Charities Act has a direct application with respect to the requirement to register with the Charity Commission.

## PCCS NO LONGER TO BE 'EXCEPTED' CHARITIES

Hitherto, PCCs were not required to register with the Charity Commission (Charities Act 1993, s. 3(5)) and fell into that category of charities that were known as 'excepted' charities since, though they were recognised as charitable, they were excepted from the requirement of registration (Statutory Instrument 1996/180 Charities (Exception from Registration) Regulations 1996).

In the consultations prior to the Bill, the Strategy Unit (Cabinet Office, Strategy Unit Report, Public Action, Private Benefit, Sept. 2002, p. 87) considered that the continued existence of such excepted charities was anomalous and permitted many charities to operate without adequate regulation. The aim is ultimately to abolish this class of excepted charities so as to make all charities equally subject to registration with the Charity Commission.

## ... BUT TRANSITIONAL ARRANGEMENTS APPLY

However, it was appreciated that to require the registration of all exempt and excepted charities would be too great an administrative task to be undertaken at one go. A transitional arrangement was therefore introduced in the Charities Act 2006, where a threshold of £100,000 was set for registration (s. 9). Although all churches and PCCs fall into this category, only churches with a gross annual income limit of £100,000 are currently caught by the legislation.

The Act, however, does provide for a review of the Charities Act after five years from receiving the Royal Assent and it is likely that the income limit may be further reduced in the future. For now, however, £100,000 is the operative figure.

## GROSS ANNUAL INCOME OF £100,000

The requirement of registration does not therefore apply to the majority of churches, but there is likely to be a steady increase in the number of churches whose annual income does exceed this sum. Note, that the material figure is the *gross* income, not the balance of income over expenditure. Gross income includes income from all sources, including special trusts (Charities Act 1993, s. 97(1)) and this will therefore include any income from trusts of which the church is a beneficiary. It will also include any donations (though not donations of capital) grants, gifts, legacies, gross proceeds from fund-raising that the church might receive. It may be appreciated that, though this is a considerable sum, for a large church that has very considerable running costs and

expenditure (including of course, the parish share) an income in excess of £100,000 is nowadays by no means exceptional.

The permitted period for initial registration ended in 2009. The requirement to register therefore now applies to all parishes whose gross income has increased to more than £100,000 since that date.

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## THE REGISTRATION PROCEDURE

Registration by the Charity Commission is a legal event governed by secular charity law. Those churches which are required to register should not, however, regard this as an unduly daunting procedure.

In order to be registered as a charity, a PCC will have to demonstrate that it satisfies the criteria required for any organisation or fund to be recognised as a charity as laid down by charity law generally and the Charities Act 2006 in particular. Essentially, this means that any organisation or fund must be devoted exclusively for a charitable purpose and the activities of the charity must be for the benefit of the public or a section of the public.

What might constitute a charitable purpose is set out in the Charities Act 2006, s. 2(2). The funds of a church clearly (as they always have) fall within the head of 'advancement of religion'. The *benefit to the public*, however, must for the first time be proved under the Charities Act with respect to funds for the advancement of religion, and cannot be presumed (s. 3) as was the case previous to the Act. It is well established, however, that a church that opens its doors to the public (even though all of the public may not wish to avail themselves of this facility) does possess a sufficient element of public benefit to satisfy this test.

Consultations have taken place between the Archbishop's Council and the Charity Commission to ensure a quick and easy procedure for first registration in a form that will be readily acceptable to the Charity Commission. The use of Approved Governing Documents will ensure that all the legal requirements for registration have been met.

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## GOVERNING DOCUMENTS

PCCs already have two Approved Governing Documents: the Parochial Church Councils (Powers) Measure 1956 as amended and the Church Representation Rules (contained in Schedule 3 to the Synodical Government Measure 1969 as amended). The adoption of these Measures as the Governing Documents of the PCC appears to be a pragmatic means of setting out those provisions as to charitable objects, powers of trustees, manner of appointment, etc. that are generally required in the governing instrument of any charity.

PCCs will also have to demonstrate that they comply with the public benefit requirements of charity law, and will be required to set out their current activities. These may of course vary from one PCC to another. A number of examples of how a PCC might prove public benefit are provided in the Guide to

Registration that can be found on the Parish Resources website [www.pariahresources.org.uk/registration.htm](http://www.pariahresources.org.uk/registration.htm).

The same website has a section entitled 'PCC as Charity' that contains advice on registration and other matters relating to being a charity trustee.

In the event of difficulty in registering, advice should first be sought from the member of staff in the diocesan administration who has been appointed in each diocese to oversee the registration of PCCs. An on-line application is possible.

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## LOCAL ECUMENICAL PARTNERSHIPS

If a parish is a member of a Local Ecumenical Partnership (LEP), this may in some cases give rise to an artificially high income attributable to the parish that might trigger the need to register. A further issue is that the Approved Governing Documents referred to above are not applicable to a LEP in Categories 1 (single congregations) or 2 (covenanted partnerships). However, the priority of the Commission is to register the larger PCCs and advice is to be given with respect to the registration of LEPs after further consultations have taken place. In the meantime, work is being done on this by the Revd Roger Paul of the Church of England's Council for Christian Unity, who may be contacted for the latest position.

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## THE ANNUAL RETURN TO THE CHARITY COMMISSION

All PCCs are already required to draw up annual accounts and present these and a report on their work to their Annual Parochial Church Meeting. A PCC that remains 'excepted' from registration will continue to be exempt from making an annual report to the Charity Commission (CA, s. 46(4)).

However, those PCCs that have registered will also have to make an annual return to the Charity Commission. Registered PCCs will also be required to state on their letter heads and financial documents that they are a registered charity.

Some concern may perhaps be expressed that the administration of churches is being sucked into the control of the secular authorities. However, this is not new. Churches already receive fiscal benefits such as Gift Aid, tax relief, etc. from the State as result of their charitable status; so it is perhaps right that there should be some checks and accountability on the use and expenditure of what in effect amounts to over £100 million of public money.

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