

# **Churches: Registration with the Charity Commission under Charities Act 2006**

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# Churches: Registration with the Charity Commission under Charities Act 2006

## What is this Briefing Paper about?

The Charities Act 2006 sets out new requirements for registration of charities with the Charity Commission. Under these new rules, some churches will be required to register for the first time.

This Paper primarily concerns those churches that were previously 'excepted charities' or to put it another way, 'excepted from registration'. **Not all churches come within the category of 'excepted charity'** so care must be taken in ascertaining whether and in what timescale your church should register with the Commission.

By using an FAQ format, this Paper describes what an excepted church charity is, when and how it should be registered, together with related questions.

## What is an 'excepted charity'?

An excepted (church) charity is described by law broadly as a church which is connected with the following bodies:

Baptist Union; Church in Wales; Church of England; Congregational Federation; Evangelical Fellowship of Congregational Churches; Fellowship of Independent Evangelical Churches (FIEC); Grace Baptist Trust Corporation; Methodist Conference; Presbyterian Church in Wales (also known as Calvinistic Methodist Church); Religious Society of Friends; Strict and Particular Baptists; United Reformed Church.

## Which churches are not 'excepted charities'?

Any church that does not fall within the list of 'historic denominations' listed in the previous question are not excepted from registration.

## So what is the duty to register with the Charity Commission?

The answer to this must be considered in two parts. First for non-excepted churches and secondly for excepted churches:

### a) Non-excepted churches

Non-excepted churches must register on the same basis as any other charity. The rules changed on 23rd April 2007 and now state that any (non-excepted) church must register with the Commission if their annual income is above £5,000 per annum.

### b) Excepted churches

A church that was previously 'excepted from registration' and which has an annual income over £100,000 must now register with the Charity Commission. This means that many existing excepted charities will have to register for the first time.

Because of the scale of the work in registering such a large number of churches for the first time, the Charity Commission has set down a staggered timetable for each church to register. This is based on denomination. The registration process began on 1st October 2008 and will run until 30 September 2009.

## What about excepted churches with an income of under £100,000?

Churches which are currently excepted and whose annual income is below £100,000, will remain 'excepted' and will not have to think about registration until 1st October 2012. A review of the operation of the Charities Act 2006 will be undertaken in 2011 which may result in the £100,000 threshold being lowered or even abolished.

## So how and when should our church register?

The Charity Commission has been working over the past year with the relevant denominations and has devised specific model governing documents for each denomination.

The Commission has also issued a timetable showing which quarter during the coming year to the end of September 2009 the different churches should send in their applications. Churches in these categories which have had no information yet should get in touch with the head office of their denomination.

The timetable for the main denominations together with denominational contacts is as follows:

Name	Registrable entity	Email/lead contact	Timetable
Church of England	Parochial Church Council (PCC)	<a href="#">Diocesan offices</a>	Applications will be handled in 3 tranches: - October / November 2008 - January to mid February 2009 - May to June 2009
Methodists	Assets of Local Churches, circuits and districts	<a href="#">Alan Pimlott</a>	Applications will be handled over a seven month period by standing committee member. The programme starts in October 2008 and runs through to April 2009.
URC	Working funds of churches and Synods	<a href="#">Revd Roberta Rominger</a>	Applications will be scheduled over 4 periods i.e. church charities in: - Synods 1 to 3 Jan & Feb 2009 - Synods 4-6 March and April 2009 - Synods 7 to 9 May and June 2009 - Synods 10 -12 July 2009 onwards
Baptist Union	Working funds of local church	<a href="#">Linda Holder</a>	Applications will be phased on a monthly basis from 1 October 2008.
Grace Baptists	Working funds of local churches	<a href="#">Eric Cousins</a>	Applications will be handled from 2 January 2009
Congregational Federation	Single charity comprising chapel building and working funds	<a href="#">Mark Tucker</a>	Applications will be delayed until the new model trusts take effect
Quakers	Area Meetings and British Yearly Meeting	<a href="#">Helen Griffith</a>	Applications will be handled from 2 January 2009

FIEC Churches	Working funds of local churches	<a href="#">Brian Matthews</a>	Churches with name beginning : A to K Jan- March 2009 L to K April 2009 onwards
Church in Wales	PCC's	<a href="#">Lyn Chandler</a>	Applications will be handled in two tranches from April 2009
Presbyterian Church in Wales	1. The central Connexion of the Presbyterian Church of Wales; and 2. Assets of local churches	<a href="#">Ifan Roberts</a>	Applications will be delayed until the revised constitution has been approved by the General Assembly
Evangelical Fellowship of Congregational Churches (EFCC)		<a href="#">Anthony Harrison</a>	April 2009

The Charity Commission guidance and timetable, together with further details and the nominated links at each denomination can be found at <http://www.charity-commission.gov.uk/registration/regreq.asp#1>

### **Must we follow the denomination's document?**

Churches which consider their denomination's approved governing document too narrow to cover their activities will be able to prepare their own governing document. Stewardship's legal team can help if you would like. However, Anglican Churches, the Methodists, the URC and the Church in Wales must accept their approved governing documents as these are defined by statute law.

### **Can we wait until the Charitable Incorporated Organisation (CIO) is available?**

Other than churches in the four denominations who must have the denominational governing document, churches may be tempted to wait until the new CIO format of charity becomes available. However, we have been advised by the Office of the Third Sector that the legal formalities for the creation of the CIO format will not now be available until October 2009 at the earliest. Churches that would like to adopt this format are therefore advised to establish themselves as a charitable company limited by guarantee (CCLG) (rather than under an unincorporated trust deed or constitution). This is because conversion to a CIO from a CCLG will legally be more straightforward than transferring the assets etc. from an unincorporated charity.

### **We received an unusually large gift this year. Do we still have to register?**

A Church which is an excepted charity with a usual annual income of much lower than £100,000 may, unusually, receive a large legacy or other gift which pushes its income over the threshold for registration. Recent guidance from the Charity Commission states that if the gift is specifically given to be used for **capital purposes only** (technically called an 'endowment'), i.e. it is not available to be spent as general income, then the church can apply to the Charity Commission for a written determination that a different year is used as the baseline for assessing whether registration is required.

However, other Commission guidance does not make this 'capital' distinction. It states that where there are 'special circumstances' that exceptionally take the church's income over

£100,000, an application for a 'written determination' can also be made. FAQ 561 dated 22 September 2008 refers to the receipt of a legacy, *which is not necessarily specified to be for capital purposes only*, and reads "In special circumstances like this the church can apply to the Commission for a written determination that they are not required to register. In the first instance the Charity Commission will normally only require registration where the *income* is *regularly* over £100,000 pa" [*Emphasis added*].

We have specifically queried this apparent inconsistency with The Charity Commission and received the following reply: "if the gift is given for income purposes it must be included in income. If this is really exceptional i.e. normal income lower than say £80,000 a determination is probably the best way forward". A determination is a legal decision of the Charity Commission.

We therefore recommend that if you find yourself with an **exceptional** gift that takes income over £100,000 for the key year, the church writes to the Charity Commission to ask their permission not to register even if that gift was not explicitly for capital purposes.

Note however, if normal income levels fluctuate (say from around £80,000 to £120,000 year on year), then even if gross income in the last year ended prior to 1 October 2008 is only £80,000, the Commission have advised us that the church should apply for registration and should not rely on continuing excepted status through to 2012.

### **Which year is relevant to assessing if the £100,000 is exceeded?**

The relevant year is the last accounting year that ends before 1 October 2008. If however your church income is fluctuating around £100,000 or is expected to permanently decline below the threshold from the coming year, we recommend speaking to your denomination's appointed person.

**Our church is not registered and is not one of the listed denominations. But we are a registered place of worship. Are we still exempt from registering?**

There has been a lot of confusion in the past over some churches who the Charity Commission stated did not need to register even though they were not part of one of the excepted denominations. These have mostly been churches which have been "registered places of worship".

However, the law and the Commission now make it clear these churches are required to be registered. Therefore, if a Church's **congregational funds** (the money given by the members or received from other sources) **exceed £5,000 per year**, the church should apply for registration now.

Stewardship can help churches that need to register now but, as yet, do not have a suitable governing document. Some churches have a property trust deed but no trust to govern the congregational funds. We will look at each case individually and advise on the way forward.