

Registration of churches as charities

Kevin Russell

March 2022



This Briefing Paper and others like it are provided free of charge and help a great many churches and charities. Their development involves many hours of dedicated professional expertise both from within and outside of Stewardship. They are provided at our own cost as part of our mission to equip you.

If you find the material in this Briefing Paper to be of value, we would invite you to respond in the following ways:

- Subscribe to receive our email bulletins at our website, **stewardship.org.uk**; and
- Tell others in your church or charity about our resources.

If this resource has been of particular help and significance to your church or charity, you may consider making a financial gift to Stewardship in appreciation. Please feel under no obligation, but should you wish to do so, you can make a one-off donation at **stewardship.org.uk/partners/20021569**.

Stewardship

1 Lamb's Passage, London EC1Y 8AB

020 8502 5600

enquiries@stewardship.org.uk

stewardship.org.uk

Copyright

This publication is the copyright of Stewardship. We want our resources to have the maximum impact, therefore you are welcome to reproduce or otherwise distribute this material in whole or part. We simply ask two things: (1) there must be no use for commercial gain, and (2) Stewardship is clearly acknowledged with the following wording "Reproduced with permission from Stewardship. www.stewardship.org.uk". If extracts are to be used in another context, permission should be sought in advance by emailing enquiries@stewardship.org.uk or telephoning 020 8502 5600. Thank you.

Scripture quotations taken from The Holy Bible, New International Version® NIV®

Copyright © 1973 1978 1984 2011 by Biblica, Inc. TM

Used by permission. All rights reserved worldwide.

Disclaimer

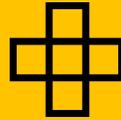
Whilst every care has been taken in the preparation of this material, Stewardship cannot be responsible for action taken or refrained from in reliance thereon. It is recommended that appropriate professional advice be sought in each relevant individual circumstance.

Stewardship is the operating name of Stewardship Services (UKET) Limited, a registered charity no. 234714, registered in England & Wales, and a company limited by guarantee no. 90305, registered in England & Wales.

© Stewardship 2022

Contents

About Stewardship	4
1. Introduction	5
1.1 What do we mean by 'registration'?	5
1.2 What this Briefing Paper is about	5
2. What is a 'charity'?	6
3. What are the different forms of 'registration' in Paragraph 1.1 about?	7
3.1 Registration of the trusts for the building in which public worship takes place	7
3.2 Registration of the building as a place of worship	8
3.3 Registration as a charity with the relevant charity regulator	8
3.4 Recognition by HMRC as a charity for tax purposes	10
4. Recognition by HMRC as a tax charity	11
4.1 Introduction	11
4.2 Conditions for recognition as a tax charity	11
4.3 What charity tax reliefs are at stake?	12
5. How can Stewardship help with Charity Registration?	14



About Stewardship

Stewardship is here to help the Christian community in the UK to give and receive.

We help over 40,000 people to give generously and sacrificially to support the causes they love, and connect them in to a growing community of 4,000 churches, 6,000 charities and 2,800 individual partners creating positive change, and being responsible stewards, in Jesus' name.

For more than a century we have actively served those pioneering Christian mission. Together, we are driven by our desire that the wider world will encounter Jesus through the generosity of his people and the transformational work of the causes they support.

We call this **Active Generosity**.



Introduction

This paper has been written because we come across a number of churches that believe that they are ‘fully registered’ but are not. Commonly, this is because of misunderstandings regarding building trusts, registered places of worship, being or not being an ‘excepted charity’ or thinking that HMRC has registered the charity. The following pages seek to clarify the relevant laws and clear up any misunderstandings.

Unless otherwise stated, the paper deals with the law as it applies in England and Wales. However, parts have application throughout the UK. Where this is the case, the text makes this clear.

1.1 What do we mean by ‘registration’?

When we speak of ‘registration as a charity’, there can be some confusion as to exactly what is being referred to. One could be speaking of one of four possible but very different scenarios:

- Registration as a charity with the relevant charity regulator (under Charities Act 2011 for charities in England and Wales, under Charities and Trustee Investment (Scotland) Act 2005 for charities in Scotland, or under Charities Act (Northern Ireland) 2008 for charities in Northern Ireland).
- Recognition, rather than registration, as a charity by HMRC under Finance Act 2010.
- Registration of the trusts for the building in which public worship takes place, with the charity regulator, as above.
- Registration as a place of worship under the Places of Worship Registration Act 1855.

Even if a church legally does not need to be registered with a charity regulator (Paragraph 3.3 covers the legal requirements in further detail), it is likely that all churches will want to be recognised as charities for tax purposes (for which, see Section 4).

1.2 What this Briefing Paper is about

This paper principally concerns the first two of the above scenarios although brief reference is made to building trusts, and registration of places of worship.

We start by briefly explaining what it is that determines if an entity is a charity. We then discuss the four forms of registration (or recognition) set out in Paragraph 1.1 above and conclude, from charity law and tax perspectives, on when and why a church should be registered with the relevant charity regulator. Finally, we consider how and why charity tax reliefs could be inadvertently foregone.

The charity regulators are the Charity Commission in England and Wales (‘the Commission’), the Office of the Scottish Charity Regulator (‘OSCR’) or the Charity Commission for Northern Ireland (‘CCNI’).

2 What is a 'charity'?

Whether or not a body is a charity in law depends on the context in which the question is asked. For example, there is one test for charity law and charity registration purposes and another, wider, test of whether or not an entity is a charity for tax purposes.

In its most basic sense, a charity is a body that is established for wholly charitable purpose. A 'body' may be a body of trustees (as an unincorporated charity), an association, a charitable company limited by guarantee, a charitable incorporated organisation ('CIO'), or one or two other forms of charity.

The body's governing document determines whether or not it is 'established for wholly charitable purposes'. The document (which may be, for example, a trust deed, Articles of Association or CIO Constitution) will declare the body's 'purposes' and then set out powers that the body can use in pursuance of those activities. The types of purposes that are regarded as charitable are set out in law, principally in Charities Act 2011, Charities and Trustee Investment (Scotland) Act 2005 and Charities Act (Northern Ireland) 2008.

The relevance of this for this paper is to underline that, with the exception of a CIO, it is not registration as a charity that establishes the body as a charity. Rather, it is the terms of the governing document that does this. If that document declares wholly charitable purposes and the remaining terms of the document fall within the laws relating to charities, it is a 'charity' regardless of whether it is registered or not. Whether or not the law then requires that charity to be registered is a separate matter and the subject matter of this paper.

In the case of a CIO, the CIO does not come into existence until it is registered with the Charity Commission. Therefore, establishing the CIO's constitution as charitable and its registration as a charity with the Commission happen simultaneously.

3 What are the different forms of ‘registration’ in Paragraph 1.1 about?

The forms of registration in Paragraph 1.1 each perform a different purpose. We start with the third and fourth of the listed scenarios.

3.1 Registration of the trusts for the building in which public worship takes place

For many older churches, a trust was set up to hold the church property (buildings and associated land etc.) and this was the only function of the trust. Trustees would be appointed under the trust deed to look after the building and make it available for public worship. The deed may limit the use to a particular denomination or statement of beliefs. However, the deed makes no reference to the church congregation that occupies the building nor the working funds of that congregation.

This type of trust deed is known as a ‘buildings trust’. It declares a charitable purpose of maintaining a building for use as a place of worship and is therefore a charity in its own right. But as it does not deal with the activities and working funds of the church congregation, a separate governing document is needed to govern those activities and funds. That (separate) trust is registrable as a charity with the appropriate charity regulator, in the normal way.

Despite this, many church congregations have continued to operate believing that the buildings trust is their (only) governing document and that, as such, the church is exempted from registration with the Charity Commission. However, this is not the case for a pure buildings trust. One has to consider registration of the buildings trust and the church’s working funds separately.

In most cases, the buildings trust will have no income. As such, it is not liable to be registered in England and Wales so long as its income falls below the £5,000 registration threshold in s30(2)(d) Charities Act 2011. Further, if the building is also registered as a place of worship (see next paragraph), it will be exempted from registration under Reg 2, The Charities Act 1993 (Exception from Registration) Regulations 2008.

In more recent times, churches have been set up under a single governing document with the power to hold property and the church building in the same charity that manages the working funds of the church. In this case, the 2008 exception regulations will not apply to it¹ and the church will need to consider registration in accordance with Paragraph 3.3 below.

¹ In the past, Charity Commission staff appear to have been confused on this point. Official guidance has now clarified the legal position. See [gov.uk/government/publications/excepted-charities/excepted-charities--2#buildings-that-are-registered-places-of-worship](https://www.gov.uk/government/publications/excepted-charities/excepted-charities--2#buildings-that-are-registered-places-of-worship).

3.2 Registration of the building as a place of worship

Here, the register is maintained by the General Register Office for England and Wales under the Places of Worship Registration Act 1855. The Act does not apply to the Church of England.

A church can register buildings, rooms or other premises as meeting places for religious worship. Nowadays, registration is voluntary. However, it is a pre-requisite to application for a license to solemnise marriages at the premises, under the Marriage Act 1949. Each registered place of worship is assigned a registered number and a list of registered places can be found at gov.uk/government/publications/places-of-worship-registered-for-marriage.

Since the passing of the Local Government Finance Act 1988, places of worship have not had to pay business rates whereas churches in general are entitled to the 80% charities' exemption with relief for the remaining 20% being at the discretion of the local authority. In practice, most churches do not pay business rates.

The law states that a registered place of worship (which is a buildings trust) is excepted from registration as a charity in England and Wales².

3.3 Registration as a charity with the relevant charity regulator

The legal requirements for charity registration³ depend on which part of the United Kingdom the church is situated and differ slightly between each constituent country.

3.3.1 Churches in England and Wales

The relevant regulator is the Charity Commission and registration is governed by the Charities Act 2011. Charities (including churches) must register if their annual income exceeds £5,000 per annum.

However, some (but only some) churches are currently excepted from this registration requirement if both of the following are true:

- their gross income is less than £100,000, and
- they are connected with one or more of the following bodies:
 - The Methodist Church;
 - Baptist and Congregational churches within section 2 of the Baptist and Congregational Trusts Act 1951⁴ ;

² The Charities Act 1993 (Exception from Registration) Regulations 2008 (SI 2008/3268).

³ It is unlikely that an informal gathering of people meeting as a 'church' will be legally required to register, unless and until they become formally constituted. However, caution should be exercised here. For example, if an informal group were to make a public appeal for donations or publish material contrary to prevailing public policy, they may well attract the attention of the relevant regulator. Informal unregistered groups will not qualify for charity tax reliefs.

⁴ The text of the 1951 Act is not readily available. However, the Government includes the Association of Grace Baptist Churches East Anglia, South East and West Anglia, BUGB, BU of Wales, the Gospel Standard Trust, the Grace Baptist Trust Corporation, Old Baptist Union, Congregational Federation and Evangelical Fellowship of Congregational Churches within the section 2 definition.

- Independent churches affiliated to the Fellowship of Independent Evangelical Churches;
- The Calvinistic Methodist or Presbyterian Church of Wales;
- The Church of England;
- The Church in Wales;
- The Religious Society of Friends (Quakers);
- The United Reformed Church.

Churches that fall within one or more of the above denominations have a compulsory requirement to register if gross income exceeds £100,000, rather than the £5,000 income threshold that applies to charities generally.

This exception from registration is temporary and expires on 31 March 2031⁵. In the meantime, the Charity Commission will be working with each of the above denominations with a view to registering their currently excepted churches in phases between now and 2031 at which point the exception is expected to be withdrawn entirely.

Note:

If a church constitutionally changes into a charitable incorporated organisation ('CIO') it will no longer be able to be an excepted charity. This is because a CIO can only exist when it is registered by the Commission. Church of England PCC's cannot change to a CIO as the PCC itself is governed by ecclesiastical law.

3.3.2 Exceeding the income threshold

It would be fairly easy for a church that is presently excepted from registration because its income is below £100,000 to slip above that figure and not think about the need to register with the Charity Commission. But if it is to benefit from the various charity tax reliefs, the church should remain alert to the need to register when the time comes. One of the conditions of being recognised by HMRC as a charity for tax purposes is that, where it is legally required to be registered with the Commission, it is in fact registered (see Section 4).

Similarly, churches should not ignore temporary income changes. For example, if a building fund appeal takes the church's income above £100,000 for one or two years only, when the church would otherwise have continued to be excepted from registration, it is essential to take prompt action to check the registration position with the Charity Commission. It is possible that the Commission will give a legal determination to allow the exception to continue, but it is by no means certain in every case.

3.3.3 Churches in Scotland

The relevant regulator is the Office of the Scottish Charity Regulator ('OSCR') and registration is governed by The Charities and Trustee Investments (Scotland) Act 2005. In Scotland, all charities (including churches), regardless of their annual income, must register with OSCR.

⁵ The Charities (Exception from Registration)(Amendment) Regulations 2021 (SI 2021/55).

3.3.4 Churches in Northern Ireland

The relevant regulator is the Charity Commission for Northern Ireland ('CCNI') and registration is governed by The Charities Act (Northern Ireland) 2008, as amended. As in Scotland, all Northern Irish charities (including churches) are required to register with CCNI, regardless of their annual income.

For various reasons, the charity registration process in Northern Ireland has been delayed. Some charities have now been registered. But many have not. Only charities that have been 'called forward' by CCNI should apply for registration.

Newly formed charities can obtain guidance on registration at charitycommissionni.org.uk/start-up-a-charity/registering-a-new-charity/.

Existing charities should refer to charitycommissionni.org.uk/manage-your-charity/register-your-charity/. CCNI is not necessarily aware of every charity in Northern Ireland and therefore it is important that church trustees know whether or not they appear on CCNI's 'Combined List' of charities⁶ to be called forward for registration. If the church is not on this List, the church's details should be entered onto CCNI's 'Expression of Intent' online form⁷. This is to notify CCNI of the church's existence and need to register. The church will then be called forward by the Commission at a future date. Completing the form does not mean that your church will be called forward earlier than normal or that your registration application will be fast tracked. If there are valid reasons for requesting early registration, these can be put on the form. Evidence in support of the request may be sought.

3.4 Recognition by HMRC as a charity for tax purposes

Another area of confusion amongst charities is HMRC's recognition of a charity as a 'tax charity' for Gift Aid and other tax reliefs. In some trustees' and church leaders' minds, 'registration' with HMRC means that they are a registered charity and they may on occasion quote their HMRC reference as if it is their charity registration number. As can be seen in Paragraph 1.1 above, HMRC do not register charities. Instead if they are satisfied that the requirements of Finance Act 2010 are met, they will recognise the entity as a tax charity entitled to the various tax reliefs afforded to charities. The requirements of the 2010 Act are set out in the next section.

⁶ charitycommissionni.org.uk/manage-your-charity/register-your-charity/combined-list-and-expression-of-intent-form/

⁷ surveymonkey.com/r/?sm=3%252fnoTJav6ko9KC80NizRw%253d%253d

4 Recognition by HMRC as a tax charity

4.1 Introduction

If a church is not already recognised by HMRC as a tax charity (if Gift Aid is routinely claimed, it will be recognised), it will need to apply separately for recognition as a tax charity in order to benefit from the tax reliefs summarised below. Application is made through the HMRC online service found at gov.uk/charity-recognition-hmrc.

4.2 Conditions for recognition as a tax charity

Schedule 6, Finance Act 2010 defines the meaning of charity for tax purposes. This sets out four conditions that must be met before the charity can be recognised for tax purposes:

“...charity means a body of persons or trust that—

- (a) is established for charitable purposes only,
- (b) meets the jurisdiction condition ...,
- (c) meets the registration condition ..., and
- (d) meets the management condition ...”

We will look at each of these in turn.

4.2.1 Established for charitable purposes only

At first sight, this is fairly straightforward. However, it should be noted that regardless of where the church is situated within the UK, it will need to satisfy the charitable purposes requirements of Charities Act 2011 (ie as set out in the England and Wales Act). In Scotland and Northern Ireland the legal definition of ‘charitable purposes’ is similar, but not identical, to that in England and Wales.

4.2.2 The jurisdiction condition

If the church is UK based, this condition should not present any problems. It simply means that the church is subject to the control of the relevant UK court in the exercise of its jurisdiction with respect to charities. That is, the High Court, the Court of Session (in Scotland), the High Court in Northern Ireland and in respect of VAT matters, includes the High Court of the Isle of Man. Churches based in an EU member state, Norway, Iceland or Liechtenstein can also meet the

jurisdiction condition where they are subject to a court in their own territory which exercises corresponding jurisdiction over the church as a charity.

4.2.3 The registration condition

This condition is a crucial one to pay attention to. This condition says that the church must be registered with the Charity Commission, OSCR or CCNI, as appropriate, where legally required by charity law. Reference should be made to section 3.3 to establish whether or not registration with the relevant charity regulator is required by law for your church.

For churches based in an EU member state, Norway, Iceland or Liechtenstein, the church should be registered with the equivalent regulator in the relevant territory if local law requires this. However, our understanding is that only a very few overseas not for profits have managed to meet this eligibility condition.

4.2.4 The management condition

This condition is about the 'managers' of the church meeting HMRC's 'fit and proper persons' test. The term 'manager' means the persons having the general control and management of the church. This is a wider definition than simply referring to the trustees. HMRC has published guidance on what it expects of the church's managers if they are to meet the 'fit and proper' test. The guidance can be found at [gov.uk/government/publications/charities-fit-and-proper-persons-test/guidance-on-the-fit-and-proper-persons-test](https://www.gov.uk/government/publications/charities-fit-and-proper-persons-test/guidance-on-the-fit-and-proper-persons-test). This guidance is essential reading and includes a suggested Declaration that charities can ask their 'managers' to consider and sign.

4.3 What charity tax reliefs are at stake?

There are a large number of tax reliefs that are available to charities and their donors. It is not necessary to list them all here, but the following list shows some of the more common reliefs that are at stake where a charity has not been properly recognised by HMRC as a tax charity.

Income tax

- 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.
- The Gift Aid Small Donations Scheme (which is separate from, but complements, the main Gift Aid Scheme).
- Donations under the Payroll Giving Scheme.
- Donor reliefs for gifts of qualifying shares, securities and property to the church.
- Exemption from the profits arising from fundraising events.

Capital gains tax

- Donor exemption for gifts of any asset chargeable to capital gains tax, to the church.

Corporation tax

- Qualifying charitable donations made by a company.

- Corporation tax exemption for gifts of assets chargeable to corporation tax, to the church.
- Where the church itself is an incorporated charity, all of the reliefs listed under 'Income Tax' and 'Capital Gains Tax' above.

Value added tax

- 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.
- Zero rating for advertising, collection boxes and collection (regular giving) envelopes.

Inheritance tax

- The reduced rate of Inheritance tax applying to estates where 10% or more of the 'net estate' is left to 'charity'.
- Exemption from Inheritance tax for legacies to the church.

Stamp Duty/Stamp Duty Land Tax/Stamp Duty Reserve Tax

- Exemption from Stamp Duty, Stamp Duty Land Tax and Stamp Duty Reserve Tax on transfers of land, property, shares and securities to charity.

5

How can Stewardship help with Charity Registration?

We strongly advise against 'DIY' charity formations, especially in relation to CIO's. We are seeing a fair number of CIO's as well as other charity structures being legally formed (perhaps using online templates) that just are not appropriate for what the trustees want the charity to do. Whilst this may save a relatively modest sum of money at the outset, it can lead to much more expense and stress later on. There is no substitute for using an experienced charity lawyer who also understands church doctrine and functions.

Stewardship provides a charity formation and registration service which is specifically tailored to the needs of churches. A flexible approach is taken to ensure that the needs of your denomination or stream are met. For further information, visit stewardship.org.uk/charity-formation.

If you would like to discuss any of these matters in further detail, Stewardship has an accessible Consultancy Helpline service. For more information, visit stewardship.org.uk/consultancy-helpline.

Enquiries

Please email any comments or questions in regards to this Briefing Paper to enquiries@stewardship.org.uk.

