

**Congregational
Federation in
Scotland**

Churches and the Law

A knowledge of the legal position of the Church they govern is probably something which every Deacon or Manager should be aware of, since there is a whole raft of legislation affecting the day to day lives of Churches and which it makes sense to know something about.

Children (Scotland) Act 1995 - It is a fact that the Church is the largest voluntary organisation in the UK working with children. It is also a fact that if the Church is to fulfil its mission, it is going to come into contact with people who could cause harm to the very children with whom the Church is trying to work. The challenge for the Church is to detect those who are intent on evil before they are able to do anything about it. There is no question but that the Church must be seen to be trusted by those whom it seeks to serve and this means not allowing our guard to drop for an instant.

In England & Wales, the Children Act of 1989 is the substantive legislation and both this and its Scottish equivalent seek to address the issues which have arisen over child abuse. Abuse is categorised as :

1. Physical injury
2. Sexual abuse
3. Neglect
4. Emotional abuse and
5. Organised abuse.

The Church has a duty of care to all who come under its influence and it is imperative that all Church workers who come into contact with vulnerable people, including children, are above reproach.

The Government has produced guidelines, specifically aimed at voluntary organisations, which stress the need for those who are to be asked to work with such people to be carefully assessed. Unfortunately, such checks take time and it is necessary to follow the laid down procedures in order that the system does not collapse completely from the volume of enquiries.

The Rehabilitation of Offenders Act 1974 does not require a convicted criminal to admit to crimes for which he has been punished when applying for a job, but applications to work with children are specifically excluded from this Act. However, this is still not a guarantee. Further enquiries can be made of the Federation's Youth & Childrens' Officer at the Nottingham address.

Copyright, Designs & Patents Act 1988 covers almost everything which has been published either in book form, on CD, record, or on video and which has been copyrighted by the author. This means that unless you have written permission and have paid the necessary royalties, it is an offence to use such material for gain in a public performance. The purpose of the Act is to protect the owner's right to an income from material which he or she has composed.

It is therefore an offence to reproduce words and/or music rather than use a hymn book on which royalties have been paid in the purchase price.

The copyright on written material expires after 70 years while that on visual material expires after 25 years. Under the Act it is illegal to reproduce words and/or music for use on an overhead projector or a closed circuit television system or to produce hymn sheets by copying the words onto boards, posters or handouts.

It is possible to get a licence for an annual fee which will cover most eventualities.

Data Protection Act 1988 may have some pitfalls for Churches, but as with most pieces of legislation, it is very much a matter of interpretation. The Act provides protection to both companies and individuals over how information about them can be used.

Under the Act, everyone has the right of access to any information which is held about them and the right to prevent such information being used in ways which might be detrimental to the individual or company concerned. The Act allows for compensation for those who have been wronged. It also allows for inaccurate or untrue information to be erased or destroyed, and where agreement cannot be reached, there is a commissioner who can be called upon to adjudicate.

Information which is given in good faith for one purpose, may not be used for another purpose without the owner's consent.

The Act does not refer specifically to information held by Churches, but it is possible that the information which is held on members by Churches could be subject to the Act.

The Disability Discrimination Act 1995 has been with us for eight years, but to allow time for the necessary changes to be made, the provisions have been introduced in stages. Anyone who provides goods, facilities or services to the public, sells, rents or manages land or property, or employs more than 15 people has to comply.

Although it is unlikely that a Church will fall into the last category, it is likely that it will certainly be caught by the first and could possibly be liable under the second. However, should you employ someone who is disabled, you will be obliged to ensure proper access under one of the other provisions.

No employer is allowed to discriminate against a disabled person who applies for a job purely on the grounds of their disability. If employed, a disabled person must enjoy the same rights as an able bodied person. The only time when it may be permitted for an employer to refuse someone on the grounds of a disability could be where safety would be compromised.

The Church is very often in the business of providing goods, services and facilities and is therefore likely to be affected by this section of the Act. Under the provisions, disabled people must have the same rights as able bodied people and it becomes unlawful to exclude them simply on the grounds of

their disability. So it would be unlawful to exclude someone who requires the services of a guide dog simply because you have a policy of not allowing dogs into your premises, but it might be lawful to exclude someone who is not in control of their actions if there were safety implications.

Under the section on the purchase or rent of land or property, disabled people are to be afforded the same rights as able bodied people unless there are practical reasons why this is impossible. However, it is worth remembering though that the vendor of a property is not liable for making the property accessible to disabled persons who wish to rent or buy it.

The final part of the Act deals with "Physical features" which in layman's terms is the part concerned with access. This is the area which concerns Churches most since many were not built at a time when consideration of the plight of the disabled was uppermost in people's minds with the result that most are decidedly unfriendly towards those with disabilities and the cost of making them disabled friendly is going to be substantial.

The implementation of this part of the Act is upon us now and it behoves Churches, to make every effort to overcome any physical barriers to access which there may be. In practice, this means that such barriers to access must be either removed, altered in such a way that they are no longer barriers, avoided by providing alternative access, or the access must be provided in a different way.

The Act has been drafted to cover as many eventualities as possible and as such Churches do not come in for specific mention, therefore we need to interpret what is meant for our situation.

A physical feature is seen as being anything which is part of the design of the building and it may be necessary to surmount such obstacles by the use of ramps or handrails. A physical feature can also be anything within the building which prevents disabled people from accessing all parts of the premises. This will include toilets, stairs and doors which may not be wide enough to take a wheelchair.

Then there are the fixtures, fittings and furniture in the building which have also to be considered. Things like large print hymn books, audio loop sound systems, places to park wheelchairs etc.

Finally, the Church grounds are also considered to form part of the Church for the purposes of the Act and the same consideration has to be given to them.

Employment Law - (Employment Rights Act 1996; Redundancy Payments Act; Health & Safety at Work Act 1974; Race Relations Act 1976)

Ministers of Religion are considered to be self employed for all purposes other than the National Insurance Act. This means that they pay the same National Insurance contributions as any other employee and are entitled to the same benefits including old age pension and sick pay but for all other purposes,

they are considered to be self employed. So, strictly speaking, such matters as unfair dismissal are dealt with by ecclesiastical courts. Good practice, however, usually means that Congregational Churches will provide details of a ministers terms and conditions of employment in his offer letter and under Scots Law, such a letter will be deemed to be a contract.

Employment Rights Act 1996

It is important to remember that any employees whom you take on are entitled to a written statement of the terms under which they are employed and this must be given within two months of the commencement of the employment. It should include :

- Job Title
- Hours of Work
- Amount of Notice
- Sick Pay
- Holidays
- Redundancy Terms
- Rate of Pay
- Frequency of Pay
- Special Conditions
- Disciplinary/Grievance Procedure
- Pension Arrangements
- Name/Address of Employer
- Date employment began
- Name of Employee
- Type of Employment

It is also often forgotten that all employees are entitled to receive an itemised pay statement which gives details of gross pay, deductions and net pay.

Employment legislation is a minefield, and it is as well for anyone who is an employer to carry significant Employer's Liability Insurance.

Redundancy Payments Act

Since ministers are considered to be self employed, the Redundancy Payments Act does not apply to them, but it could apply to any other employees.

There are some conditions attached to the Act in as much as employees under 20 and over 65 to do qualify for Redundancy Pay. Anyone between 64 and 65 has any payment which they are entitled to reduced and the maximum is 30 weeks pay based on 1 weeks pay for each year of service rising to one and a half weeks pay for service over age 41.

Health & Safety at Work Act 1974

Health & Safety is seen as the bane of most employers lives. However, employers and employees are obliged to take precautions in respect of working practices and where these are not met, there are substantial fines which can be levied. The Health & Safety Executive is responsible for enforcing the Act and they have wide ranging powers.

Both Employer & Employee have responsibilities under the Act. The employer has to ensure that the working environment is not only safe, but also free from pollution and that those who are using the workplace are aware of all the do's and don'ts which they must abide by. Accidents and their reporting must be dealt with in such a way as to satisfy the Executive.

The employer is also obliged to set up a safety committee if 2 or more of his employees request it and he has duties in respect of fires and fire prevention, the environment in which workers are expected to carry out their duties, and the wellbeing of employees.

The employee is charged with ensuring that his actions do not endanger his own safety or the safety of others.

Churches are notorious for having potential hazards lurking in corners and there should be someone in each Church who has responsibility for ensuring that such hazards are dealt with or at the very least brought to the attention of someone who will deal with them.

Race Relations Act 1976

For many years now, we have been familiar with this legislation and whilst embracing wholeheartedly the need for its introduction, there are many now who feel that the pendulum has swung too far in favour of ethnic minorities to the extent that the indigenous population are being disadvantaged.

There is little doubt that despite this legislation, there are still many cases of racial abuse in this country and that is to be condemned. It tends to be used more in employment than in other areas of our lives, and despite it having an effect on most pieces of legislation since 1976, it is very much a powder keg area which no one really wants to grasp.

In essence, the Act provides the right to those from ethnic minorities to go about their lawful business without let or hindrance on account of their race or colour. In relation to employment, the powers of the Act extend to discrimination against someone in respect of their selection for a job, doing the job, promotion, career development, redundancy or dismissal.

The Act has been refined over the years and there has been subordinate legislation in respect of :

- Asylum Seekers
- Housing/Rents
- The Armed Forces
- The Police

Environmental Health

Environmental health is an area of the law with which we probably don't come into contact with as much as we should. Certainly any Churches which are in the habit of preparing and selling food to the general public will find themselves affected by legislation governing what may or may not be done in this area.

Environmental health includes such things as water purity, vermin control, sewerage, refuse handling, drainage, food hygiene and noise pollution - in fact just about everything which is covered by the BBC programme "Life of Grime".

Housing (Scotland) Act 1988

Churches who are intent on letting out their property need to be aware that there is legislation which provides tenants with rights. The tenant can acquire security of tenure, the right to have his rent determined by a tribunal and the right of his spouse to succeed to the tenancy. Once again, if you wish to avoid problems, it makes sense to have any tenancy agreement drawn up by a professional and to ensure that all the areas which you are likely to want to invoke at any later stage are also covered.

Persons who live in a tied property are not covered by the legislation since their occupancy is governed by the terms of their employment.

EU Units & Measurements Act 1995

You may remember the market trader who tried to sell bananas by the pound instead of by the kilo and who got fined for his trouble. Under the EU Units & Measurements Act 1995, all loose items which are sold by weight must be sold in kilograms. Trading Standards can prosecute for non compliance.

Human Rights Act 1998

The Human Rights Act is a sweeping piece of legislation which whether we like it or not is now part of the fabric of our society. It covers almost every aspect of our lives. Unfortunately, the way in which it has been applied throughout Europe is not consistent with large parts of it being subordinate to the national laws of the countries which have signed up to it. The result is that there are wide variations in the way in which it is applied at a local level. An

example of the way in which it is being ignored by some countries is to be found in the Working Hours Directive where officially it is illegal for anyone in the EU to work more than 48 hours in any week. It further tries to limit the demands which organisations make on peoples free time to a total of 55 hours a week and it goes on to make totally inappropriate demands which it seems most people have decided to ignore.

No one has yet been prosecuted under the directive.

Planning (Listed Building & Conservation Areas)(Scotland) Act 1997

Churches may come into contact with planning legislation and regulations in respect of listed buildings. Where a building is listed or is part of a conservation area, there are strict rules about what may and may not be done to both the outside and the inside of the building.

This is a complex area of the law and churches would be well advised to seek the help of an architect or someone from one of the government agencies responsible for administering this aspect of the law.

Useful Contacts

Congregational Federation
8 Castle Gate
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NG1 7AS

Tel : 0115 911 1460
e-mail : admin@congregational.org.uk

Congregational & General Insurance plc
Curren House
Curren Street
Bradford
BD1 5BA

Tel : 01274 700700
e-mail : c&gi@congregational.co.uk

HM Inspector of Taxes
Centre 1
East Kilbride
G72

See Local Phone Book for details

Customs & Excise
Portcullis House
India Street
Glasgow
G2 4PH

Tel : 0845 010 9000

The Office of the Scottish Charity Regulator

Argyll House

Marketgait

Dundee

DD1 1QP

Tel : 01382 220314

e-mail : info@oscr.org.uk

IR Charities

St Johns House

Unit 361

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Meldrum House

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