Contemplating a change in Charitable Status?

There is an understandable trend in Scottish Baptist Churches to explore a change in charitable status. It may be because you have heard that the Scottish Baptist College has already changed, or that our Union is changing, as is BMS; perhaps you have become more aware of the challenge to attract good leaders to your church. Most Baptist churches, founded many years ago, are currently constituted as unincorporated charities and many well continue to be so for years to come. However, it seems wise that churches give consideration to the question, ‘do we wish to remain unincorporated or change to an incorporated form of charity?’ There are two forms of incorporated charities that should be considered. However, the decision is entirely yours as a church. The following document seeks to help you make an informed decision and gives links to other sources of information which you should fully explore before pursuing a new status or remaining in your current form.

Why Incorporation?
Most churches consider incorporation for two reasons:

**Identity** – Incorporated bodies have their own identity in law and can therefore own property, enter into employment contracts, take out loans, sue and be sued. Unincorporated bodies do these things in the names of the individual leaders as trustees.

**Limited personal liability for Trustees** – Incorporation provides general protection for Trustees, although in cases of negligence, recklessness, illegal activity or operating outside of charitable remits, Trustees can still incur personal liability.

Two Forms of Incorporation
There are two forms of incorporation increasingly considered by churches:

**The Scottish Charitable Incorporated Organisation (SCIO):** Introduced in April 2011, the new SCIO format allows charities to be incorporated but to be administered and regulated by a single body, the Office of the Scottish Charity Regulator (‘OSCR’). The advantages of this form to local churches is that it provides the protection and identity described above, whilst maintaining the relative simplicity of dealing only with OSCR. Changing to a SCIO requires a new form of constitution to be agreed by the church and OSCR together, with the existing property, employment contracts, debts, bank accounts etc. to be transferred to the new SCIO from the old charity. This has to be done carefully and may require some legal support. Where churches own property, including their church building, this will require appropriate legal services. The process is relatively inexpensive, with the exception of the property related costs. The disadvantages include, should the church lose its charitable status, it would need to find a new legal identity, and transfer assets and debts again.

**A Charitable Company Limited by Guarantee:** The advantages of this format are that it has a long established legal pedigree and if a church should lose its charitable status for any reason, it would continue to exist as a company limited by guarantee. All limited guarantee companies which have a registered office in Scotland are registered with the Registrar of Companies in Scotland. This gives the church two regulators, both OSCR and Companies House, with both of which they must comply. During the company formation process, a Memorandum and Articles of Association must be completed. The Memorandum states the names of original guarantors (effectively the original owners of the company) and their agreement to set up the company and become its founding
members. The Articles outline the rules and regulations which the company has to follow. A limited guarantee company must register its annual accounts. It must also submit a ‘Confirmation Statement’ to Companies House and make various other filings when various events occur. It must also maintain statutory registers. This level of reporting far exceeds that which Baptist Churches are familiar with in all but a few of our larger churches. The penalties for failing to report to Companies House in the correct way and at the right time should be considered carefully, if choosing this form of charity.

Serious consideration needs to be given to how a move to company limited by guarantee status will impact the understanding Baptists have of the church. We would also strongly advise churches seeking to become a Charitable Company Limited by Guarantee to obtain appropriate guidance from a solicitor who is thoroughly familiar with the charitable sector, company law and where possible, Baptist ecclesiology.

Ministers Defined Benefit Pension Scheme
The changing of charitable status constitutes a cessation event. Any church that is part of the defined benefit scheme will be required to pay their debt in full before changing charitable status or follow a process, determined by the Pension Fund Trustees, where the debt is transferred to the incorporated body. In the case of the pension debt, church trustees will not be exempt from the potential of future personal liability. Failure to comply with the Pension Fund Trustee requirements in the process of incorporation could stall the process and also lead to an immediate requirement of payment.

SCIO Draft Model Constitution
Work will be carried out in late 2017 to create a draft model constitution for those churches seeking to become a SCIO. We will seek to have approval from OSCR for the model constitution. However it will remain, as always, the responsibility of the local church to determine the exact wording of its own constitution and whether this is the correct legal framework for their ministry.

Reflecting a Baptist understanding of Church
As Baptists we believe in and have practised the priesthood of all believers. Under Christ we have practised the belief that the church meeting is the ultimate authority in the church, not the minister, elders, deacons, trustees or leadership team. Whilst we recognise that gifts of leadership are essential to the health and wellbeing of the church, we maintain a belief that even our leadership structures are overseen by the whole body. We have also historically maintained a membership of believers who profess Christ as their Saviour and Lord. This has been practiced in two forms, either a ‘closed membership’ position where all members are required to have been baptised as believers and predominantly by immersion, or the alternative ‘open membership’ position that accepts believers who profess Christ as Saviour and Lord without the requirement of believer’s baptism; usually there is a requirement that they have been baptised in another tradition rather than no baptism at all. Our draft model constitution for a SCIO will reflect these historical founding beliefs. Churches seeking to become Charitable Companies should ensure that their Articles of Association continue to reflect these beliefs and ensure their compliance with the “Declaration of Principle.”
Where to get further information

https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure
http://www.oscr.org.uk/charities/becoming-a-charity
http://www.oscr.org.uk/charities/guidance/a-guide-to-incorporation
https://www.gov.uk/topic/company-registration-filing/starting-company
http://www.scvo.org.uk/setting-up-a-charity/

Alan Donaldson is happy to talk to church leaders who are seeking clarity in this area or have questions they would like to explore. Please book a telephone appointment through Jenny:

0141 423 6169 or Jenny@scottishbaptist.org.uk

Declaration of Principle

The Basis of “The Union” is:

1. That the Lord Jesus Christ our God and Saviour is the sole and absolute Authority in all matters pertaining to faith and practice, as revealed in the Holy Scriptures, and that each Church has liberty, under the guidance of the Holy Spirit, to interpret and administer His laws.

2. That Christian Baptism is the immersion in water into the name of the Father, the Son, and the Holy Spirit, of those who have professed repentance towards God and faith in the Lord Jesus Christ, who died for our sins according to the Scriptures, was buried and rose again the third day.

3. That it is the duty of every disciple to bear witness to the Gospel of Jesus Christ, and to take part in the evangelisation of the world.