

CLAS CIRCULAR 2019/7 (29 April 2019)

Disclaimer

CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though we take every care to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertakes any liability for any error or omission in the information supplied.

It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

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CHARITIES AND CHARITY LAW

Brexit, European elections and non-party campaigners: update

For information **and possibly for action**

Further to our last Circular, With regard to the forthcoming European elections on 23 May, the Electoral Commission has issued the following [advice to non-party campaigners](#) [emphasis added]:

“We have published our guidance for the European Parliamentary elections [EPEs] scheduled to take place on 23 May 2019. The elections will take place in other EU Member States between Thursday 23 and Sunday 26 May 2019. *The regulated period for political parties and non-party campaigners will extend back to 23 January 2019.*

If you are an individual or organisation that spends money campaigning in the run-up to the EPEs, but do not stand as a political party or as a candidate, then you may need to register as a non-party campaigner.

You must register as non-party campaigner with us if you spend, or plan to spend, more than £20,000 in England or £10,000 in any of Scotland, Wales or Northern Ireland on ‘regulated campaign activity’ during a regulated period. During the regulated period there are rules about how much non-party campaigners can spend on ‘regulated campaign activity’.

For the 2019 European Parliamentary elections (EPEs), the regulated period began on 23 January 2019, and will end on polling day (i.e. 23 May). The regulated period applies retrospectively.

If you are unsure whether or not you have spent money on regulated campaign activity, then please refer to the guidance below. You can also get in touch with us if you have questions.

Whilst we process all registration applications as quickly as possible, undertaking our necessary assessment process means that a decision will not be granted immediately. If we have all of the information we need, it usually takes on average about a week to receive a decision. You should ensure that you lodge your application with us in good time for us to undertake this assessment before you spend over the registration threshold.

Links to further guidance on the requirements for registering as an NPC ahead of the EPEs, as well as the spending rules can be found below:

- [Situations & procedures: European parliamentary election 2019](#): This part covers: rules for non-party campaigners at the European parliamentary elections 23 May 2019.

- [Situations & Procedures: Registering with us](#): This part covers: who can register as a non-party campaigner; when you must register as a non-party campaigner; how to apply to register; what happens after registration.”

While the “exit day” legislation does not make it inevitable that the Government will hold EU Parliamentary elections, the retrospective elements of the [Political Parties, Elections and Referendums Act 2000](#) mean that CLAS members who think that they might be affected should take action **now** on their obligations with regard to their activities *from 23 January 2019*.

And as we noted in our earlier Circular, if the European Parliament elections go ahead in the UK, *any regulated spending which non-party campaigners incur in relation to the EP elections will also count against their regulated spending limits for any domestic General Election called during the next twelve months*.

[Source: Electoral Commission – April, undated]

FAITH & SOCIETY

Government response to consultation on crematoria provision

For information

On 8 April, the Ministry of Housing, Communities & Local Government and the Minister for Faith, Lord Bourne of Aberystwyth, announced the Government's [conclusions](#) following the review of crematoria provision and facilities – to which CLAS responded. Cremations have become increasingly common: in 2017 there were 467,748 – representing just over three-quarters of all deaths – and each crematorium had an average of 1,607 cremations. The review into the size and provision of crematoria facilities was announced in autumn 2015 and a formal [review](#) was published alongside the 2016 March Budget.

Overview

The Government's proposals for reform are to revise national guidance on the siting and design of crematoria – subject to further consultation – and to offer support to community groups interested in operating their own crematoria or associated facilities. Lord Bourne has written to local authorities telling them that all reasonable steps should be taken to allow the needs of those with different faiths to be met in public buildings, to encourage providers to be more transparent about their services, and to have appropriate staff training to understand different faith requirements.

The review received 153 responses, of which 110 provided statistical information through the online survey. The majority of respondents were from the Hindu communities (particularly in North and West London and Leicester) but there were also representations from other faith and belief groups, and those of no faith. The self-reported religions or beliefs of the respondents were as follows: Hindu 28%, Pagan 11%, Christian 4%, Sikh 3%, Humanist/Secularists 2%, Jain 1%, Jewish 1%, Others 3%, Not specified/Not applicable 46%.

The problems raised by respondents

The responses highlighted the following issues (in order of priority) which are considered in more detail below:

- the capacity of crematoria to accommodate large groups and problems with car parking – for example, the Jain community in London said that there were no chapel halls large enough to accommodate mourners as Jain funerals and “people have to stand outside in all weather”;
- difficulties with the design of crematoria (for example, fixed seating or catafalque – Pagan respondents had a particular problem with fixed seating which prevented people sitting in a circle – and a lack of facilities to carry out specific rituals, including separate prayer rooms,

washing facilities, a viewing room to witness the committal of the coffin and proximity to running water in which to scatter ashes;

- difficulties with booking slots, slots being too short – the “half-hour problem” – and/or having to pay higher prices for weekends;
- the need for new crematoria, and/or travelling long distances to use a crematorium in specific localities;
- insensitive or inflexible iconography or other services, such as prayer books or music;
- lack of awareness or insensitivity from some crematoria staff and funeral directors of the needs of the different faith and belief groups.

Existing crematoria and construction of new facilities

Development of crematoria

The consultation explored the practicalities of existing and new crematoria and highlighted the issues associated with a building that is capable of accommodating both large numbers of mourners, but also the much smaller numbers which tend to be the norm. The Federation of Burial and Cremation Authorities estimated that to accommodate groups of around 300 mourners would double construction costs, meaning that sites would not be economically viable [44]. At the other end of the scale, one provider argued that it would be uneconomic to build crematoria that handled only around 500 cremations a year, as the construction costs would remain the same and therefore the price of cremation would be forced up [19].

A number of providers noted the challenges in developing new crematoria. In particular, the lack of available or affordable land; a need for sufficiently large sites to make a development economically viable; legislation and guidance which effectively restricts development in Green Belt or other countryside with strict planning controls; and public opposition and/or local authorities seeking to protect existing council-owned facilities [17].

The Ministry recognises that there are challenges in developing crematoria which arise from the size and scale of development that is normally required. It considers that the restrictions in the [1902 Cremation Act](#) remain appropriate to protect neighbouring dwellings and the sanctity of memorial grounds. These prevent a crematorium from being located within 200 yards of any dwelling house (except with the consent of the owner) and 50 yards from a public highway. However, it recognizes that additional restrictions are contained in the Department of the Environment's 1978 guidance, *The Siting and Planning of Crematoria* “or equivalent industry guidance”, which recommend sites with sufficient land of at least two to four hectares and in a quiet location to allow peace and tranquillity. MCHLG will therefore consult on revised guidance which could allow smaller sites to be developed, particularly if there is not an accompanying burial ground or need for space to scatter ashes. Developers will, however, still need to be sure of the economic viability of a site [23].

However, the Government has no plans to reduce the protections in national planning policy for the Green Belt, which ask local planning authorities to regard a new crematorium as an inappropriate development on Green Belt land needing very special circumstances to justify planning permission. Other protections will continue to apply in other countryside and designated land such as National Parks [24]. Furthermore, the Government continues to believe that local authorities are best placed to consider the need for new crematoria in their area and to consider the facts and circumstances of individual applications. It will bring this response to the attention of local authorities in areas where respondents felt a new crematorium is needed [25].

Existing crematoria

The crematoria providers indicated that the existing chapels were normally built to accommodate up to 100 mourners, and there was a clear problem in accommodating large groups. This impacts particularly on the Hindu, Sikh and Jain faiths, but can also affect the funerals of young people or where the person died in tragic circumstances or was well-known in the community [41]. However, the majority of cremation services do not exceed 100 people and in most cases the size of the chapel or funeral hall is adequate; Leicester City Council pointed out that most of the services are attended by fewer than 30 people and that larger chapels may make small gatherings feel uncomfortable [44].

In addition to the size of chapels, respondents highlighted increasingly longer service times and the requirements of some faiths for mourners to wash and view the charging of the coffin into the cremator; these factors reduce service availability and are likely to have a significant impact upon the other users of the facilities [48]. While appreciating that needs will vary across the country and that in some areas demand will be low, MCHLG did not accept the argument that specific facilities are unjustified if used only several times a year. "Crematoria, like other public buildings, should be able to be utilised by all members of the community". It also reminded local authorities of their duties under the [Equality Act 2010](#) to avoid discrimination, and more broadly, encouraged all crematoria to work closely with their local communities in ensuring that their facilities meet specific needs [72].

Iconography in crematoria

A number of respondents highlighted that the particular problem that iconography – and other materials such as prayer books or music – were not provided to meet the needs of their own faith or belief. Many commented that crematorium design was still overwhelmingly Christian in ethos: for example, seating in pews [78]. Equally, however, a number of respondents raised concerns about the removal of Christian iconography [79]. The Government's response suggests that it is "important to note that England has an established Church, and the status of the Church of England is protected in law" [79] – which is absolutely correct but ignores the point that the Church of England does not own or operate crematoria: that is what local authorities do.

The Mission and Public Affairs Council of the Archbishops' Council told the review that it was

“common for Christian celebrants to arrive and find no Christian iconography in place at all, since it will only be provided in response to a specific request. That ... suggests, reasonably, that the usual iconography – a Cross etc – should routinely be in place for Church of England funerals” [79].

The majority of crematorium providers said that they provided removable iconography to meet the needs of faith or community groups [80], while the National Secular Society argued that civic crematoria were religiously neutral spaces by default and that they “should provide a range of religious iconography and inform users in advance that these are available upon prior request” [83]. 90 per cent of providers who answered the question said that they provided removable iconography [84], while many of them offered local faith groups the opportunity to provide their own iconography [86]. The review concludes that:

“Crematoria should ensure that their facilities are suitable to meet the needs of all members of the community, including those from all faiths and none. As part of this, we encourage the provision of interchangeable iconography, and will consult on revised guidance that supports this” [88].

Staff training and cultural/religious sensitivity

One-third of respondents said that they had experienced problems with staff awareness [104]. A Pagan respondent said that there was no awareness of Paganism at all and that there was an “incorrect association with Satanism” [105]. 37 out of 48 providers said that they offered staff training on cultural awareness [107], while only one said that it had had any complaint about the cultural awareness of staff [108].

MCHLG’s conclusion on the issue is as follows:

“111. We appreciate that some of the reported concerns may relate to different interpretations of faith and belief practices and that there can be a lack of consensus on such matters, even within a single faith. Nonetheless, crematoria providers should clearly be able to demonstrate sufficient understanding of faith and other community groups’ requirements to be able to provide an appropriate service. Some of the examples of training or guidance that were referred to appeared to focus more on equality and diversity rather than be comprehensive guidance for all crematoria staff on faith and belief practices.

112. We have discussed the importance of staff training and engagement with providers and representative bodies, and will consider further working with members of the National Cremation Working Group which the Ministry of Justice has set up to provide expert input into infant cremation legislation and practice. As highlighted previously, we also encourage all crematoria to work closely with their local communities to ensure their facilities meet specific local traditions and to be transparent about the services they offer so that the families of the bereaved can make informed choices. We also support any efforts by the industry to improve the diversity of staff which may help to improve awareness and engagement with particular communities.”

[Source: MCHLG – 8 April]

FUNDING

Gift Aid: aggregated donations limit clarified

For information

Charities Online gives charities the option to add together small donations up to a total of £1,000 per entry. This means that you do not have to provide details for individual donations (although you can do if you prefer). The limit for donations is £20, but in early April 2019 the HMRC website indicated that this had been increased to £30. **That was an error by HMRC, which has now reversed the change** – so it's back to a £20 limit.

Aggregating donations: how it works

You can aggregate donations of £20 or less from different donors and show them as a single entry on the spreadsheet. The total donation on one line cannot be higher than £1,000 and the total cannot include donations associated with admissions to charity visitor attractions.

To claim Gift Aid on aggregated donations, do not enter the name and address of individual donors as this will slow down your repayment claim. Instead you must enter:

- a simple description like 'Thursday club donors' in the 'aggregated donations' box (maximum of 35 characters);
- the date of the last donation; and
- the total amount raised.

Only add together donations that were made within the same accounting period. Your accounting period ends on the date to which you prepare accounts unless your organisation was set up by a trust deed or will or was established outside the UK. In those cases, your accounting period runs to 5 April.

For the avoidance of doubt, **we should emphasise that the aggregated donations limit relates to processing Gift Aid claims and is entirely separate from the Gift Aid Small Donations Scheme (GASDS). The recent increase in the eligible donation value under the GASDS from £20 to £30 has not changed.**

[Source: HMRC – 17 April]

PROPERTY & PLANNING

Places of Worship Protective Security Scheme

For information **and possibly for action**

The Places of Worship Protective Security Scheme is part of the [Government Hate Crime Action Plan](#). To meet the criteria for consideration for funding, your application will need to demonstrate that your place of worship is vulnerable to hate crime or has been subjected to an attack within the last two years which was motivated by hostility or prejudice based on religion or belief. The Scheme covers places of worship in England and Wales *only*; faith schools, educational institutions, community centres and NHS establishments (including chapels and prayer rooms) are not eligible to apply. Further, if a vicarage, manse, community or church hall is attached to the worship building, *only the building used for worship is eligible for funding*. (There is a separate scheme for the Jewish community administered by the [Community Security Trust](#).)

If you think that your church meets the criteria, you can register your interest in the [latest round](#) of funding by e-mailing securityfundingced@homeoffice.gov.uk. Applications can be submitted from **July 2019**.

[Source: CLAS – 26 April]

Listed Places of Worship and Memorials Grant Schemes: feedback wanted

For information

The next meeting of the LPWGS Stakeholders is taking place on **24 May 2019**: the Historic Religious Buildings Alliance and the Church of England's Cathedral and Church Buildings Division will be meeting DCMS and HM Treasury to discuss the running and implementation of the Scheme.

The key issue will be contributing to the case being made by DCMS, as part of its Spending Review proposals, in relation to the continuation of the LPWGS (and the Memorials Grant Scheme) beyond March 2020. Departments will be expected to submit their spending proposals by June/July 2019: there then follows a few months of negotiation between Departments and HMT before the Spending Review is announced in Autumn 2019.

There is always a lot of uncertainty around this – and the uncertainty has been increased by Brexit. Becky Payne of the HRBA is anxious to have any feedback you might be able to give on the LPWGS: its

administration, any particular issues you may have experienced and any improvements you might want to suggest. She would need feedback by **Wednesday 15 May** at the latest.

[Source: HRBA – 18 April]

Listed Places of Worship Grant Schemes: website redesign

For information

DCMS is currently working with Topmark to try and make the current Listed Places of Worship Grant Scheme website easier to use and compliant with wider gov.uk standards. DCMS and Topmark are seeking up to five places of worship *that have recently used the LPWGS* to take part in interviews lasting approximately 45 minutes that will focus on users' experience of the scheme and suggestions on how the website could be improved for current and future applicants. The interviews will be conducted remotely and can be arranged for any time to suit the interviewee's schedule.

DCMS says that it greatly values the input of those who have previously used the scheme and that the exercise will offer a chance to help shape the experience of future applicants:

"Whilst participation in the interview process is not remunerated, you would have the option of playing a further part in the design process and your feedback would be instrumental in taking the redesign forward."

Anyone interested should contact dexter.berridge@culture.gov.uk, or ring 0207 211 6042.

[Source: HRBA – 17 April]

SAFEGUARDING

IICSA and mandatory reporting of child sexual abuse: update

For information

Bates Wells Braithwaite [reports](#) that the Independent Inquiry into Child Sexual Abuse (IICSA) is actively considering the question of introducing mandatory reporting of child sexual abuse in England and Wales. The Inquiry consulted with the Victims and Survivors Forum, a self-nominating group of victims and survivors of child sexual abuse, and has now published a summary of responses: [Mandatory reporting of child sexual abuse: A survey of the Victims and Survivors Forum](#), in which the great majority of respondents from the Forum (88.6%) were in favour of introducing mandatory reporting.

Responses were largely informed by respondents' own experiences of abuse. Some suggested that a mandatory reporting law at the time when they suffered abuse could have led to something being done to stop the abuse or to the offender being brought to justice [14]. Conversely, others suggested that the existence of a mandatory reporting law would have discouraged them from disclosing the abuse they had suffered:

"I would not have spoken out in therapy about my parents sexually abusing me if I knew the professional would have no choice but to report to the police. My concern is that mandatory reporting may put off victims from coming forward as they lose all control" [15].

The summary of responses includes the statement that "The responses the Inquiry received will be taken into account as part of the Chair and Panel's consideration of mandatory reporting" [12].

IICSA held a seminar on mandatory reporting in September 2018, looking at existing obligations to report child sexual abuse in England and Wales the experiences of other countries that have mandatory reporting legislation. It will hold a second seminar on 29 and 30 April to consider the arguments for and against mandatory reporting laws and the practical considerations involved in introducing a mandatory reporting regime.

Evidence thus far suggests that the Government is very unenthusiastic about mandatory reporting. On 10 September, Baroness Walmsley (LD) asked an oral question in the Lords about how the Government plans to respond to IICSA's report on safeguarding failures at Downside and Ampleforth schools, published in August 2018. In reply, the Parliamentary Under-Secretary of State, Department for Education, Lord Agnew of Oulton, said this on mandatory reporting:

"I know that there are calls for mandatory reporting and the noble Baroness, Lady Walmsley, who asked the Question, is a keen advocate of it. All noble Lords will be aware that we have consulted on this matter. We had 760 responses from social workers, police officers and other connected

parties. Some 70 per cent of them felt that mandatory reporting would have an adverse impact; 85 per cent said that it would not, in itself, lead to the appropriate action being taken.”

We'll see what IICSA concludes – but a move to mandatory reporting would obviously have consequences for some CLAS members, if not for all of them.

[Source: IICSA – April 2019]

Scotland

Consultation on occasional licences

The Scottish Government has published a [consultation](#) on the fee for an occasional licence and is also seeking views on the potential new fee.

Currently voluntary organisations may apply for an occasional licence authorising the sale of alcohol at an event connected with the organisation's activities. A single voluntary organisation may hold over a 12 month period:

- not more than 4 occasional licences of 4 days or more in duration;
- not more than 12 occasional licences of less than 4 days in duration.

The total number of days, however, on which an occasional licence has effect must not exceed 56 during any 12 month period.

The fee is currently set at £10 although the Government proposes raising this following a review in [2014](#).

You can read the full consultation document and respond [here](#).

The consultation closes **16 July 2019**.