

## CLAS CIRCULAR 2020/16 (8 June 2020)

### 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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## CLAS WEBINAR FOLLOW-UP

### Letter from MHCLG

For information

Those who attended the webinar with Emily Pignon and Sean Bianco, from MHCLG, may recall that it began with a reference to the reply of the new Minister for Faith, Lord Greenhalgh, to a letter by CLAS about various policy issues – but we had not at that point seen the reply. We have now received an e-mail from MHCLG as follows:

'I am sorry that there are currently correspondence delays due to the sheer amount we have received. We appreciate that Emily and I effectively verbally communicated the letter to you on 20 May at the webinar, as we had to receive input from across government departments relating to your specific points and proposals. You will still receive the ministerial letter shortly, but in the meantime we will share the policy content we had already verbally relayed to you.

MHCLG continues to play a facilitative role in ensuring Government understands the needs of faith communities and the challenges you may be currently facing due to the pandemic. As you are aware, we are working closely with a range of faith and community groups to better understand how Government can support them to respond to the pressures they face on sustaining their organisations during this period of time.

You rightly highlighted that **The Coronavirus Job Retention Scheme** provides support for entities with a UK payroll – small or large, charitable or non-profit, to be reimbursed 80% of furloughed workers' wages by HMRC, up to a cap of £2500 per month. However, we know that some charities cannot furlough staff as they are contributing to the frontline response and there is a substantial package of targeted support for charities on the frontline of responding to Covid-19.

The Government set out a £750m support package for charities to ensure they can continue their vital work during the coronavirus outbreak. Government has committed £200m for small and medium sized charities and social enterprises. Funding will help maintain and enhance services for vulnerable people affected by the current crisis, where delivery organisations are experiencing income disruption and/or increased demand. Funding is being distributed by the National Lottery Community Fund, alongside its own funding, and is live. DCMS will review learning from the early distribution of the £200 million fund and evolving picture on the impact of the crisis, to inform decisions on the distribution of the remaining £110 million, so that funding is best utilised to address emerging priorities and opportunities.

**Registered and excepted charities are eligible to apply to the Coronavirus Community Support Fund.** You can find out how to apply to the Coronavirus Community Support Fund here: [www.tnlcommunityfund.org.uk/](http://www.tnlcommunityfund.org.uk/) If you're a group that's looking for government funding,

because you can't accept funding from The National Lottery, please tell them in your application in order to ensure you receive government money. Further information is within <https://www.tnlcommunityfund.org.uk/funding/covid-19/learn-about-applying-for-emergency-funding-in-england>.

As part of the overall package, £360m of the total is being directly allocated by government departments to charities providing key services during the crisis based on evidence of service need. Up to £200m of this will directly support hospices and be administered by the Department of Health and Social Care. £60m will go to Scotland, Wales and Northern Ireland to support thousands of charities on the frontline helping vulnerable people affected by COVID-19.

The purpose of the **Coronavirus Job Retention Scheme** is to support people who would otherwise have been made redundant. To prevent fraudulent claims, HMRC made clear that individuals cannot work or volunteer for their organisation. This is to protect individuals too – if we allowed workers to volunteer for their employer, the employer could ask them to effectively work full time whilst only paying them 80% of the wages. DCMS is working with other government departments and the VCSE sector to identify areas where volunteers can contribute to the Covid-19 response.

On March 20th the Chancellor announced the unprecedented option to **defer VAT**, a cash injection of over £30 billion, to help businesses manage their cash flow. Going further and offering a “VAT holiday”, where those traders who had collected VAT did not have to pass it to HMRC at all, would come at large fiscal cost and undermine VAT as a consumer tax paid by consumers, via traders, but ultimately due to HMRC.

Officials at BEIS have confirmed that the **Retail, Hospitality and Leisure Grant Fund** is not available to organisations exempt from business rates. CLAS's views have been noted and would be considered if this issue were to be revisited.

**In relation to the further proposals which CLAS has put forward to government to provide support and reassurance to faith communities:**

#### **Listed Places of Worship Grant Scheme (LPWGS)**

The Government is responsible for ensuring that the historic environment of England is properly protected, promoted and conserved for the benefit of present and future generations, and will consider the case for extending the Listed Place of Worship Grant Scheme as part of the forthcoming Spending Review.

#### **Gift Aid Small Donations Scheme (GASDS)**

In respect of GASDS, guidance on the eligibility for donations for inclusion in this scheme is clear in stating that claims can only be made on cash donations of £30 or less; and contactless card donations of £30 or less collected on or after 6 April 2019.

The decision over what constitutes an eligible donation is one for the church/charity to make for themselves, rather than for HMRC, but the conditions for something to be considered a 'small donation' are clearly set out in legislation. Where it is the case, for example, of separate donations being given in a single envelope, then if the church/charity official is happy these are clearly separate "small donations" (and clearly stated as such) then they will be eligible for GASDS, as is the case where separate envelopes are used.

In relation to your second GASDS proposal, because the rules for Gift Aid are enshrined in tax law, with a requirement for the payments to follow a specific donation on which tax has been paid, it would not be possible for the Government to use the Gift Aid mechanism to make payments to charities in the way that you describe. Your request is effectively a request for grant funding to be allocated in proportion to the Gift Aid claimed in a previous year.

### **Registration of excepted charities**

Ministers and officials are aware that the temporary exception for certain religious charities is due to end in March of 2021. We are aware of the concerns facing the charities involved as well as the pressures on the Charity Commission's resources. We are currently considering the various options, including a possible extension of the exception. We will liaise directly with the representative bodies of these excepted charities, including the Churches Legislation Advisory Service.'

[Source: MCHLG, 4 June]

## CHARITIES AND CHARITY LAW

### Reporting serious incidents to the Charity Commission

For information

The Charity Commission has [updated](#) its guidance on reporting serious incidents to the Commission during the coronavirus pandemic. To submit serious incidents on behalf of the trustee body, charities can now use the Commission's [online form](#). The Commission has also [published](#) a supplementary examples document to support charities in deciding when to report an incident related to the coronavirus pandemic.

[Source: Charity Commission, 4 June]

## EMPLOYMENT

### Coronavirus Job Retention Scheme: next steps

For information

The Chancellor has [announced the next steps](#) in tapering the Coronavirus Job Retention Scheme.

From August 2020, the level of Government grant provided through the Job Retention Scheme will be slowly tapered to reflect that people will be returning to work. For June and July, the Government will continue to pay 80% of people's salaries. In the following months, businesses will be asked to contribute a modest share but, crucially, individuals will continue to receive that 80% of salary covering the time they are unable to work.

The scheme updates mean that the following will apply for the period people are furloughed:

- June and July: The Government will pay 80% of wages up to a cap of £2,500 as well as employer National Insurance (ER NICs) and pension contributions. Employers are not required to pay anything.
- August: The Government will pay 80% of wages up to a cap of £2,500. Employers will pay ER NICs and pension contributions – for the average claim, this represents 5% of the gross employment costs the employer would have incurred had the employee not been furloughed.
- September: The Government will pay 70% of wages up to a cap of £2,187.50. Employers will pay ER NICs and pension contributions and 10% of wages to make up 80% total up to a cap of £2,500. For the average claim, this represents 14% of the gross employment costs the employer would have incurred had the employee not been furloughed.
- October: The Government will pay 60% of wages up to a cap of £1,875. Employers will pay ER NICs and pension contributions and 20% of wages to make up 80% total up to a cap of £2,500. For the average claim, this represents 23% of the gross employment costs the employer would have incurred had the employee not been furloughed.

[Source: HM Treasury, 29 May]

## FAITH & SOCIETY

### Individual prayer in churches

For information

On Saturday, the Government announced that plans would be made public tomorrow, 9 June (in effect, an announcement about an announcement) for the reopening of places of worship in England for private prayer under supervision. [According to the BBC](#), a No 10 spokesperson said that the Prime Minister recognised the importance of people being able to have space to 'reflect and pray, to connect with their faith, and to be able to mourn for their loved ones' and that the Government plans 'to open up places of worship for individual prayer in a safe, Covid-secure way that does not risk further transmission'. Downing Street said, however, that any changes were contingent on the Government's five tests for easing lockdown continuing to be met.

The Church of England issued a [statement](#) in response on the evening of 6 June, following the Government announcement. The Government's announcement was welcomed by Cardinal Nichols.

The decision was [confirmed](#) by MCHLG yesterday, 7 June:

'New guidance will be published shortly to ensure the limited re-opening of places of worship can be done safely and in line with social distancing guidelines. This will recommend the thorough cleaning of shared spaces, hand cleansing at entry and exit and asking worshippers to bring their own items such as a prayer mat or religious text instead of sharing or using communal ones.

Individual prayer will be permitted from 15 June, but communally led prayer, worship or devotion such as services, evensong, informal prayer meetings, Mass, Jummah or Kirtan will not be possible at this stage.'

Northern Ireland has already allowed private prayer in places of worship but Scotland and Wales have not yet announced plans to do so.

[Source: Church of England, 6 June: BBC, MCHLG, 7 June]

## ODDS & ENDS

### Coronavirus: restrictions on international arrivals

**For information**

Four parallel sets of Health Protection (Coronavirus, International Travel) Regulations came into force today, 8 June. They impose a 14-day quarantine period on persons arriving in the UK from outside the Common Travel Area (the UK, Ireland, the Isle of Man, and the Channel Islands) in order to prevent the spread of infection or contamination from COVID-19. The Regulations require arrivals to provide information including contact details and details of their intended onward travel and to self-isolate for a period of 14 days following their arrival in the UK – with a possible fine of £1,000 for non-compliance.

There are exceptions for certain classes of people, such as medical staff, hauliers, foreign officials working on border security and seasonal agricultural workers.

[Source: CLAS, 8 June]

### Law Commission of England & Wales

**For information**

The Secretary of State for Justice has announced the reappointment of Professor Nick Hopkins as Law Commissioner for property, family and trust law for a five- year term from 1 October 2020 to 30 September 2025. Some members will recall that Professor Hopkins recently spoke to a meeting of CLAS along with Professor Rebecca Probert about the Law Commission's work on wedding law in England and Wales and the forthcoming review.

[Source: MoJ, 27 May]



## PROPERTY & PLANNING

### Ban on evictions extended by two months

For information

The Government has [extended](#) the suspension of new evictions in social or private rented accommodation until 23 August. New court rules will also ensure that vulnerable renters will be protected when the suspension of evictions ends.

[Source: MHCLG, 5 June]

### Leasehold enfranchisement for church premises

For information

In a technical but potentially important ruling in the Chancery Division, Mrs Justice Falk ruled that an independent congregation had the right to convert their lease into a freehold. In *Hope Community Church (Wymondham) v Phelan & Ors* [\[2020\] EWHC 1240 \(Ch\)](#), the issue before the Court was whether or not [Hope Community Church](#) could rely on s.1 [Places of Worship \(Enfranchisement\) Act 1920](#): 'An Act to authorise the Enfranchisement of the Sites of Places of Worship held under Lease'. Falk J observed at [12] that 'It is fair to say that the 1920 Act is a little encountered piece of legislation, with just one known contested High Court case, *Stradling v Higgins* [1932] Ch 143' (and she certainly was not wrong there).

In brief, the claimant church is a private company limited by guarantee and a registered charity [3]. The defendants, the Phelan brothers, were sued in their capacity as trustees of the pension fund of their family business, Phelan Plant Hire [3]. The premises, leased from from Phelan Plant Hire, were previously a workshop and the church had spent about £850,000 on refurbishments, including a new roof [10]. The church wanted to convert its lease into a freehold: the Phelan family did not [4].

Falk J concluded that the church was entitled to a declaration that it had the right to acquire the freehold of the Premises pursuant to the 1920 Act [94].

There is a longer note on the judgment by Philip Rainey QC, [here](#).

[Source: BAILII, 23 May]

**Securing and caring for church buildings**

**For information**

Since our last Circular, the Church of England has issued several updates to its comprehensive on [Coronavirus \(COVID-19\) guidance for churches](#).

[Source: C of E Media Centre, 5 June]

## WALES

### Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, as amended

For information

*The Revd Gethin Rhys, Policy Officer of Cytûn: Churches together in Wales, has produced a helpful note on the latest Coronavirus Regulations for Wales, which we reproduce with his permission.*

On 1 June, new Regulations came into effect in Wales: the Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, as amended. The Office of the Legislative Counsel in the Welsh Government has published the legal text (showing all changes) [here](#).

The new Regulations emphasise staying local (rather than only staying at home), and that meeting other people in the open air is safer than meeting indoors. The full guidance can be read [here](#).

There are no substantial changes in the Regulations regarding closing places of worship or conducting funerals. The one addition is that it is now legal, when invited, to travel to attend a wedding or civil partnership ceremony where one of the partners is terminally ill, and to use a place of worship to hold such a wedding service – with arrangements very similar to those for holding funerals in places of worship. However, as marriage law is not devolved, it is not yet possible to arrange to register such a marriage except through a Special Licence from the Archbishop of Canterbury if the wedding is to take place (eg) in a hospital or by Common Licence issued by a Surrogate appointed to act on behalf of a local Diocesan Bishop if it is to be held in a church – which means that only the Church in Wales (and the Church of England) may hold such services at present. There are discussions ongoing between the Welsh Government and the General Register Office regarding extending the possibility of conducting weddings (and, where relevant, civil partnerships) in such circumstances to other places of worship.

A Church in Wales priest conducting such a wedding may, under the canon law of the Church in Wales, invite a minister or worship leader from another Christian denomination to assist in the service, and this may help those from other denominations who wish to marry in such urgent circumstances.

It is not expected that any changes to the current situation will be introduced before **22 June** at the very earliest.

[Source: Cytûn, 2 June]