

CLAS CIRCULAR 2020/30 (2 November 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.

COVID-19 UPDATES	2
England	2
Scotland	2
Wales	3
Remembrance Sunday 2020 in England	3
CHARITIES & CHARITY LAW	4
Charity Commission: 'five-minute guides' for charity trustees	4
EMPLOYMENT.....	5
Furlough scheme extended and further economic support.....	5
FAITH & SOCIETY	8
Immigration status of clergy.....	8
NORTHERN IRELAND.....	9
Same-sex religious marriage.....	9
SCOTLAND.....	10
Hate Crime and Public Order (Scotland) Bill.....	10
WALES.....	11
COVID-19 and weddings	11

COVID-19 UPDATES

Possibly **for action**

England

Boris Johnson announced a second lockdown from Thursday until Wednesday 2 December:

- People will have to stay at home, except for specific purposes.
- People may not gathering with those they do not live with, except for specific purposes.
- Certain businesses and venues will be closed – *including places of worship*.

The relevant part of the [Government guidance](#) is as follows:

“5. Weddings, civil partnerships, religious services and funeral

Funerals can be attended by a maximum of 30 people, and it is advised that only close friends and family attend. Linked ceremonial events such as stone settings and ash scatterings can also continue with up to 15 people in attendance. Anyone working is not included. Social distancing should be maintained between people who do not live together or share a support bubble.

Weddings, civil partnership ceremonies will not be permitted to take place except in exceptional circumstances.

Places of Worship will be closed, unless they are being used for:

- Funerals
- To broadcast acts of worship
- Individual prayer
- Formal childcare or where part of a school
- Essential voluntary and public services, such as blood donation or food banks
- Other exempted activities such as some support groups.”

Scotland

First Minister Nicola Sturgeon announced a five-level system of graded restrictions:

- [Level 0/Baseline](#): Most businesses will be open and eight people from three households would be able to meet indoors.

- [Level 1](#): Social interaction would be restricted to six people from two households, while other measures would be close to those seen across the country in September.
- [Level 2](#): Ms Sturgeon described this as being similar to those which are seen across Scotland at the moment outside the Central Belt, including limits on hospitality and no gatherings in private homes.
- [Level 3](#): This would see “tougher restrictions” like those now in place in Glasgow and Edinburgh, including the closure of pubs – though restaurants might be able to open in some circumstances.
- [Level 4](#): This would be closer to the full lockdown applied in March, including the closure of non-essential shops. Six people from two households would be able to meet outdoors

Wales

A short, sharp “circuit breaker” or “fire-break” was introduced across Wales. The [Health Protection \(Coronavirus Restrictions\) \(No. 3\) \(Wales\) Regulations 2020](#) put in place a series of restrictive measures from 6 pm on Friday 23 October until the start of Monday 9 November 2020. (*And see below on weddings.*)

Remembrance Sunday 2020 in England

The Ministry of Housing, Communities & Local Government issued updated guidance **today, 2 November**, on [Local authority preparations for Remembrance Sunday](#). On worship, it says this:

‘Remembrance Sunday services are traditionally part of communal worship. Places of worship remain open for communal worship services for as many people as can be safely accommodated.

Whilst engaging in an activity in the place of worship or surrounding grounds, all parties should adhere to social distancing guidelines at all times, even within a group of 6. This means people should be 2 metres apart or more than 1 metre apart as well as taking extra steps to stay safe (such as wearing face coverings) to reduce the risk of transmission.

It is important that risks are managed sensibly and in line with wider [Places of worship guidance](#), and that services conform with the [COVID Local Alert Level restrictions](#).’

Unfortunately, *it appears to contradict Part 5 of the [Government guidance](#) quoted above*. If you are thinking of holding a service of Remembrance in church, we would suggest that you contact your local authority well in advance, to make sure that there is no objection.

[Source: CLAS, 2 November]

CHARITIES & CHARITY LAW

Charity Commission: 'five-minute guides' for charity trustees

For information

The Chief Executive of the Charity Commission, Helen Stephenson, has marked the start of Trustees' Week 2020 (2-5 November) by publishing a series of 'five-minute guides' – in English and Welsh – covering what she describes as a 'core syllabus' of basics that trustees need to know:

- [financial oversight](#)
- [achieving a charity's purposes](#)
- [good decision making](#)
- [addressing conflicts of interest](#)
- [what to file with the Commission and what support is available.](#)

[Source: Charity Commission, 2 November]

EMPLOYMENT

Furlough scheme extended and further economic support

For information and possibly for action

The Charity Tax Group has produced a helpful summary of the latest announcements on the Coronavirus Job Retention Scheme and future support for employment.

The Government has confirmed that the Coronavirus Job Retention Scheme – also known as the Furlough scheme – will remain open until December, with employees receiving 80% of their current salary for hours not worked, up to a maximum of £2,500. Under the extended scheme, the cost for employers of retaining workers will be reduced compared to the current scheme, which ends today. This means the extended furlough scheme is more generous for employers than it was in October.

In addition, business premises forced to close in England are to receive grants worth up to £3,000 per month under the [Local Restrictions Support Grant](#). Also, £1.1bn is being given to Local Authorities, distributed on the basis of £20 per head, for one-off payments to enable them to support businesses more broadly.

The Government has also confirmed that mortgage holidays will also no longer end at the end of October.

Job Retention Scheme

Employers small or large, charitable or non-profit, are eligible for the extended Job Retention Scheme (CJRS), which will continue for a further month.

Businesses will have flexibility to bring furloughed employees back to work on a part time basis or furlough them full-time, and will only be asked to cover National Insurance and employer pension contributions which, for the average claim, accounts for just 5% of total employment costs.

The Job Support Scheme, which was scheduled to come in on Sunday 1st November, has been postponed until the furlough scheme ends.

Additional guidance will be set out shortly, but the following information has been published.

- This extended Job Retention Scheme will operate as the previous scheme did, with businesses being paid upfront to cover wages costs. There will be a short period when we need to change the legal terms of the scheme and update the system and businesses will be paid in arrears for that period.
- The CJRS is being extended until December. The level of the grant will mirror levels available under the CJRS in August, so the government will pay 80% of wages up to a cap of £2,500 and employers will pay employer National Insurance Contributions (NICs) and pension contributions only for the hours the employee does not work.

- As under the current CJRS, flexible furloughing will be allowed in addition to full-time furloughing.
- Further details, including how to claim this extended support through an updated claims service, will be provided shortly.
- The Job Support Scheme will be introduced following the end of the CJRS.

Who is eligible?

Employers

- All employers with a UK bank account and UK PAYE schemes can claim the grant. Neither the employer nor the employee needs to have previously used the CJRS.
- The government expects that publicly funded organisations will not use the scheme, as has already been the case for CJRS, but partially publicly funded organisations may be eligible where their private revenues have been disrupted. All other eligibility requirements apply to these employers.

Employees

- To be eligible to be claimed for under this extension, employees must be on an employer's PAYE payroll by 23:59 30th October 2020. This means a Real Time Information (RTI) submission notifying payment for that employee to HMRC must have been made on or before 30th October 2020.
- Employees can be on any type of contract. Employers will be able to agree any working arrangements with employees.
- Employers can claim the grant for the hours their employees are not working, calculated by reference to their usual hours worked in a claim period. Such calculations will broadly follow the same methodology as currently under the CJRS.
- When claiming the CJRS grant for furloughed hours, employers will need to report and claim for a minimum period of 7 consecutive calendar days.
- Employers will need to report hours worked and the usual hours an employee would be expected to work in a claim period.
- For worked hours, employees will be paid by their employer subject to their employment contract and employers will be responsible for paying the tax and NICs due on those amounts.

What support is being provided and employer costs:

- For hours not worked by the employee, the government will pay 80% of wages up to a cap of £2,500. The grant must be paid to the employee in full.
- Employers will pay employer NICs and pension contributions, and should continue to pay the employee for hours worked in the normal way.

- As with the current CJRS, employers are still able to choose to top up employee wages above the scheme grant at their own expense if they wish.
- The Government will confirm shortly when claims can first be made in respect of employee wage costs during November, but there will be no gap in eligibility for support between the previously announced end-date of CJRS and this extension.

Business Grants

Businesses required to close in England due to local or national restrictions will be eligible for the following:

- For properties with a rateable value of £15k or under, grants to be £1,334 per month, or £667 per two weeks;
- For properties with a rateable value of between £15k-£51k grants to be £2,000 per month, or £1,000 per two weeks;
- For properties with a rateable value of £51k or over grants to be £3,000 per month, or £1,500 per two weeks.

Business grant policy is fully devolved. Devolved Administrations will receive Barnett consequentials which they could use to establish similar schemes.

The guidance gives no indication as to whether grants will be subject to state aid limits, although based on previous grant schemes this is likely to be the case.

[Source: Charity Tax Group, 1 November]

FAITH & SOCIETY

Immigration status of clergy

For information

On 26 October, in reply to a Written Question from Lord Moynihan on including clergy and sportspeople in their new proposed definition of a 'skilled worker', Baroness Williams of Trafford [said this](#) in relation to clergy:

'The UK Government does not have any plans to include clergy ... under the new Skilled Worker route. The current provisions of Tier 2 (Ministers of Religion) and Tier 5 (Religious Workers) ... are dedicated routes for such activities'.

[Source: House of Lords, 26 October]

NORTHERN IRELAND

Same-sex religious marriage

For information

The Government has published its [response to the consultation on same-sex religious marriage](#) in Northern Ireland – dated 16 July – and its [response to the consultation on conversion entitlements](#).

As to the first, the [Marriage and Civil Partnership \(Northern Ireland\) Regulations 2020](#), which came into force on 1 September 2020, put in place an 'opt-in' system for same-sex religious marriage, allowing individual officiants to be appointed to solemnise same-sex religious marriage where the governing authority of their religious body gives its written consent to same-sex marriage to the Registrar General; and provided exemptions under which it does not amount to unlawful discrimination for a religious body or an officiant to refuse to marry a couple because they are of the same sex.

As to the second, the [Marriage and Civil Partnership \(Northern Ireland\) \(No.2\) Regulations 2020](#), which come into force on Monday 7 December 2020, will allow for a three-year period in which couples in a same-sex civil partnership formed in Northern Ireland may convert to a marriage, and couples in an opposite-sex marriage formed in Northern Ireland may convert to a civil partnership. The fee for conversion will be waived for the first year

[Source: Northern Ireland Office, 22 October]

SCOTLAND

Hate Crime and Public Order (Scotland) Bill

For information

Following widespread criticism that the current hate crime provisions in the Bill would stifle legitimate debate, the Cabinet Secretary for Justice, Humza Yousaf MSP, has written to the Convener of the Justice Committee with details of the amendments that the Scottish Government proposed to lodge at Stage 2, and a copy of the Bill as it would look if those amendments are approved by Parliament, [here](#).

The "stirring up" offence in the Bill is to be limited to situations where "intent" is present: the Bill as currently drafted states that an offence would also be committed "where it is a likely consequence that hatred will be stirred up against such a group". [*With thanks to David Bradwell, of the Church of Scotland's Faith Impact Forum.*]

[Source: Scottish Government, 20 October]

WALES

COVID-19 and weddings

For information

Matthew Chinery, Head of Legal Services for the Representative Body of the Church in Wales has raised the following in an e-mail, in relation to weddings/funerals in Circular 2020/29:

'We don't think that weddings and funerals *are* subject to a limit of 30 persons, but rather what the church can accommodate (and the person having been invited).

There is a limit of 30 for the *celebration* of a wedding or funeral (i.e. the reception/wake) but that's a distinct exception from the exception allowing attendance at a wedding/funeral itself. And the reception/wake reasonable excuse does not apply in local lockdown areas – currently most of the country!'

Gethin Rhys concurred:

'Welsh Government's use of the word "celebration" to refer to the reception rather than the marriage service has not been helpful.

However, I think Matthew is wrong about the reception/wake excuse not applying in lockdown areas – the gathering can still take place even in a lockdown area (there is a "reasonable excuse" for gathering), but no one can cross a county or lockdown area boundary to get there (there is no "reasonable excuse" to cross the border). This has the odd result that where a wedding is held in a county other than the one a couple getting married live in, they could still marry, but be excluded from their own reception. Similarly, close family may be able to attend their loved one's funeral but be excluded from the wake, because they live elsewhere.'

Gethin concludes:

'O that Lewis Carroll were here to enjoy this hour - and realise that the world through the looking glass is so much clearer than the real world in which we now live.'

[Source: Church in Wales, 25 October]