



## **Guideline Leaflet L18: Covid-19 Coronavirus Legal Issues**

Churches are facing a very challenging time because of the lockdown imposed by the Government due to the coronavirus pandemic. This guidance aims to gather in one place the various legal and regulatory issues that have arisen because of the lockdown.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at [www.baptist.org.uk/resources](http://www.baptist.org.uk/resources)

The date on which the leaflet was last updated can be found on the download page.

# L18: Covid-19 Coronavirus Legal Issues

**These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.**

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[L17 Legal and Operations Team – Regulatory Information](#)

**These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.**

**If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your property trustees, you should contact them. They will do their best to help.**

**If your church property is in the name of private individuals who act as trustees they may also be able to help.**

## INTRODUCTION

Churches have been facing a challenging time because of the lockdown imposed by the Government due to the coronavirus pandemic. This guidance aims to gather in one place the various legal and regulatory issues that have arisen because of the lockdown. While churches long to gather together again it is important to remember your duty to protect the physical and mental wellbeing of your church and local community and your wider safeguarding obligations. The Baptist Union urges all churches to comply with the Government guidelines.

## Church Governance and Constitutions

The Charity Commission is the regulator for all Baptist churches, whether or not they are registered as charities. Churches will naturally be concerned about the difficulty that they may have in complying with all the terms of their constitution at the present time but the Commission issued reassurance in this respect at the beginning of lockdown. They said: *We want to assure charities that our approach to regulation during this uncertain period will be as flexible and pragmatic as possible in the public interest, whilst helping trustees to be aware of and think about the wider or longer impact of their decisions on their charity.*

Charity trustees are required to take decisions that are in the best interests of their charity; where this results in a procedural irregularity or a technical breach of their constitution, they should carefully minute the reason for their decision.

## Church Members' Meetings

Our Baptist identity focuses on congregational church governance and the importance of gathering together in person to prayerfully discern the mind of Christ for the church. Our model constitutions were not written for times such as these and neither the BUGB Approved Governing Document (AGD) for unincorporated churches nor the BUGB AGD for CIOs (Charitable Incorporated Organisations) provide for electronic church member meetings. There are new statutory provisions for CIOs and Companies in this respect which are outlined later in this leaflet. Most of our churches are still unincorporated and they have the following options:

1. Government guidance still suggests that where meetings or small gatherings can take place digitally without the need for face to face contact, they should continue to do so. Since our Approved Governing Documents do not provide for virtual meetings then in continuing to meet online, using Zoom for

example, a church will be in technical breach of its constitution. The Charity Commission has said that it will adopt a flexible and pragmatic approach to charities who are meeting this way during this period and churches can continue to rely on this.

As ever, while taking decisions charity trustees need to be confident that they have the support of the wider membership. On important issues that would require a decision of the church members, it is wise at this current time for trustees to do what they can to ask for members' views; by email, telephone, post or video conference, whatever works best for your church. If video conferencing is possible then it does offer the opportunity for members to listen, discuss and pray together, which are advantages. Zoom also offers an anonymous polling facility. Not all church members will be able to use video conferencing, and it is important to provide an alternative means to allow all church members to feed any comments or concerns they may have into the decision-making process.

It is important to note that important decisions taken now in an irregular way should be ratified at a later date in the gathered church meeting. Decisions taken other than in accordance with your constitution are not legally valid.

2. Communal worship, including prayers, devotions or meditations led by a Minister of Religion or lay person are now permitted in a place of worship and the advised gathering limit is based upon the capacity of the place of worship following a risk assessment and adherence to social distancing rules. A church members' meeting includes communal worship and prayer and the emphasis of the meeting is the prayerful discernment of the gathered community. We would argue therefore that a church meeting is now permissible in a place of worship. Churches should refer to the Baptists Together guidance on reopening places of worship which you can find [here](#)

There will, of course, be some members who do not feel that it is safe or wise to attend a physical meeting and so may choose to stay away but feel that they are missing out. The emphasis of our meetings has always been on the importance of people gathering together and some do always miss out e.g. the parent at home. Our meetings do not aim for democracy but discernment of the gathered community although we recognise that this has pastoral implications too.

Where a church is able to hold a gathered meeting with enough church members to meet the quorum requirements in their constitution then they can take legally valid decisions.

3. A hybrid meeting involving members who are present at the church members' meeting and those joining online is difficult since only those members present physically will be able to vote on decisions and count towards the quorum. However, churches may decide that this is still a safer and better option for them at present.

The charity trustees will need to determine which option to follow based on their local church circumstances i.e. the nature of the decisions they need to make, their church members, the capacity in their church to hold a church members' meeting whilst socially distancing, and the quorum required to pass resolutions.

Further guidance on keeping your church community connected can be found on the Baptists Together website [here](#). This includes training on using Zoom.

Anthony Collins LLP have produced a guide to video conferencing safely which you can find [here](#)

### **Annual General Meetings (AGMs)**

Many churches were due to hold their AGM at this time. The Charity Commission has said:

*Coronavirus is having a major impact on charity events and the government's health advice may lead to some charities having no choice but to decide to cancel or postpone their AGMs and other critical meetings.*

*If as trustees, you decide it is necessary to do so, you should record this decision to demonstrate good governance of your charity. This is particularly important if it is not possible to hold your AGM which may make it difficult for you to finalise your annual reports and accounts.*

For registered charities they go on to say:

*Wherever possible, we would ask you to try to get your annual reports to us on time. However, where the situation impacts on the completion of annual returns and accounts, charities with an imminent filing date can email us at [filingextension@charitycommission.gov.uk](mailto:filingextension@charitycommission.gov.uk).*

### **Charity Trustee Meetings**

Churches that have the BUGB Approved Governing Document as their constitution will not have a legal power for the trustees to meet electronically. As with church member meetings, the trustees need to take a pragmatic approach to making decisions if they are unable to meet in person. Again, it is important to carefully minute the reasons for your decisions. If all the trustees agree any lawful course of action, it will be a valid decision, whatever the governing document says. If a trustee meeting is not held by video conferencing or conference call with minutes taken, decisions may also be made collectively by asking everyone to agree to a decision in writing (including by email).

It may now be possible for the charity trustees to meet in person in the church building and the same considerations apply as for church member meetings which are discussed above.

Churches that have incorporated as CIOs have additional methods for taking charity trustee decisions and should refer to the clauses in their CIO constitution on 'Participation in meetings by electronic means' (22.9 in the BUGB CIO AGD) and 'Taking of decisions by Charity Trustees' (clause 20 in the BUGB CIO AGD). 'Electronic' refers to both video and telephone meetings.

### **Information for CIOs and Companies: new statutory provisions (June 2020)**

Churches that have incorporated as CIOs (charitable incorporated organisations) or companies should note that the Government has now passed the Corporate Insolvency and Governance Act which relaxes governance requirements and helps incorporated churches to hold legally valid meetings during lockdown. The measures apply retrospectively and came into force at the end of June.

The Act creates a more flexible framework in which meetings can be held, notwithstanding the organisation's constitutional requirements. These measures allow AGMs and other general meetings to be validly held while the current restrictions on public gatherings remain in place and in the context of the potential for social distancing measures to continue into the future.

The Act temporarily allows corporate organisations to hold an AGM or other members' meeting virtually, during the six months from 26 March to 30 September, even where their governing documents do not permit this. For AGMs it applies to those that should have been held between 26 March and 21 August 2020. For those forced to postpone AGMs due to be held after 26 March, there is a limited period in which to hold those AGMs before 30 September. The 30 September end date may be extended by additional Secondary Legislation for a maximum period of up to eight months.

The Act provides that meetings do not need to be held in a particular place and may be held and have votes cast by phone, video or other electronic means, including postal voting. The meeting may be held without any number of those participating having to be together in the same place, so a quorum can be formed with an entirely virtual meeting.

These measures apply retrospectively, which means that church CIOs that have already held a virtual AGM or other church members' meeting since 26 March can have these meetings validated even where they were not held in line with their governing document.

The Charity Commission says that if charities rely on these provisions, they 'must ensure that this decision is recorded in the minutes and that all other meeting requirements are met. You should ensure that you have a robust system to ensure only those eligible to vote can do so and that you record who has voted and the percentages of votes cast'.

These provisions do not apply to the vast majority of Baptist churches who are still unincorporated associations. These churches should continue to rely on the advice on pages 2 and 3 of this leaflet.

### **Serious Incident Reporting**

The Charity Commission has published detailed guidance to help charities decide whether they need to report a serious incident in the context of the pandemic. This can be found [here](#) and includes a table of examples to illustrate whether a report needs to be made. In particular churches should note that if a church has had to close their premises due to the lockdown, or has had to temporarily stop operating, or has experienced a substantial drop in income, then none of these are reportable unless as a result the church is:

- unable to deliver vital services to at risk beneficiaries; and/or
- insolvent and/or forced to close permanently;

or

- highly likely to be insolvent and/or forced to close permanently within the next 12 months.

The Charity Commission's general guidance on serious incident reporting continues to apply and more information can be found in leaflet [C17 Serious Incident Reporting](#).

### **Copyright Licences and Streaming**

A standard Church Copyright Licence does not include a licence for copyrighted content to be used in streaming or webcasting church services. CCLI (Christian Copyright Licensing International) now provide a streaming licence which churches can purchase [from this page](#). They say:

*The CCLI® Streaming Licence provides a solution for churches wishing to stream or webcast their services, including the live worship, via websites such as YouTube and Facebook Live that are otherwise only intended for personal use. The Streaming Licence includes the right to show lyrics as part of the stream, to enable viewers to sing along. If you are hosting the stream on your own church website you will also require a Limited Online Music Licence (LOML) directly from PRS for Music. The CCLI Streaming Licence is available to CCLI Church Copyright Licence holders.*

Churches using Zoom to stream services need both the CCLI Streaming Licence and the [PRS for Music LOML](#). This is because Zoom doesn't currently have an agreement with PRS for Music as YouTube and Facebook do.

### **Data Protection**

During this period of lockdown, we are all adjusting to new ways of working. This means, for many of us, that we are having to work from home. Your church's data protection policy will still apply to you, your church staff and volunteers, if they are doing church work from home and processing or dealing with individuals' personal data.

It is important to give consideration to the security of the data you are processing:

- Is paper-based information held in secure lockable cupboards?
- Are electronic devices where church-related personal information is held password or PIN protected? Family members should not be able to log on to the same account where church data is stored.
- Are documents containing sensitive personal information encrypted?
- Where reasonably possible, documents should be edited and saved onto church systems e.g. using online Microsoft office tools, rather than saving documents to a personal device.
- Where you cannot carry out an activity without saving a document onto a personal device, you should create a specific folder for all church-related documents and clear the folder out on a regular basis (including emptying your "recycling bin" in Windows (or equivalent) to minimise the footprint of church documents on your device).

The Data Protection Guideline Leaflet L13 has more detailed guidance for churches (see [www.baptist.org.uk/resources/L13](http://www.baptist.org.uk/resources/L13).) The ICO also has a designated Coronavirus information hub on its website which can be read [here](#) and the helpline for telephone queries is 0303 123 1113.

### Property Issues

The UK Government has published a recovery strategy with a roadmap for emerging from the coronavirus lockdown. It can be found here:

<https://www.gov.uk/government/publications/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy/our-plan-to-rebuild-the-uk-governments-covid-19-recovery-strategy>

The lockdown is being eased differently in Wales compared to in England.

As the lockdown eases it is important that churches conduct a risk assessment taking into account the risks of COVID-19 before undertaking any activity. We have published a separate leaflet on re-opening church premises which includes a risk assessment template. Links to the leaflet and the risk assessment can be found here: [https://www.baptist.org.uk/Articles/582203/Coronavirus\\_Guidance\\_on.aspx](https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx)

### Unoccupied Properties

Churches are advised to refer to [this](#) guidance from Baptist Insurance on 'Temporarily closed or unoccupied churches and church properties during COVID-19' or to contact their own insurers if they are in any doubt as to how to safeguard their unused property assets. A link to an empty property checklist can be found here:

[https://www.baptist.org.uk/Articles/572733/Empty\\_buildings\\_checklist.aspx](https://www.baptist.org.uk/Articles/572733/Empty_buildings_checklist.aspx). Churches reopening unoccupied premises after lockdown should also see the reoccupation checklist that forms part of our leaflet on reopening church premises (please see the link above).

### Recording Who Enters Property

Churches that wish to reopen should refer to our leaflet at [https://www.baptist.org.uk/Articles/582203/Coronavirus\\_Guidance\\_on.aspx](https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx) but, even where a church is not considering reopening at this stage, it would be a good idea to keep a record of everyone entering church property. This will help reduce the risk of infection, for example, by letting a person accessing the premises know that no-one else is there. In addition, if a person recorded to have had recent access to the church contracts COVID-19, prompt and appropriate measures can be taken. For data protection purposes there is a template privacy policy at Appendix 4 of our leaflet on Reopening Church Buildings (please see the link above).

## General Property Considerations

### Inspections, Repairs and Maintenance

In England and Wales, our view is that, having undertaken a risk assessment, a church may decide to allow property inspections, including quinquennial surveys, to resume provided that appropriate social distancing and other coronavirus mitigation measures are taken. Routine maintenance work can also now be undertaken with appropriate social distancing and other safety measures. There is Government guidance for people undertaking such work outside and in other settings, for England please see:

<https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19>

and, for Wales, please see <https://gov.wales/taking-all-reasonable-measures-minimise-risk-exposure-coronavirus-workplaces-and-premises-open>

### Easing of Restrictions

Churches in England have been able to reopen for services (without singing) from 4 July (please see below) and now churches in Wales may open for services in accordance with the relevant guidance. Whether opening for private prayer or services, churches should read our separate leaflet on reopening church buildings which can be found here:

[https://www.baptist.org.uk/Articles/582203/Coronavirus\\_Guidance\\_on.aspx](https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx)

#### *Opening for Private Prayer and/or Services*

Churches in England and Wales are now permitted to open for private prayer and/or services provided that the appropriate social distancing and other safety measures are in place. Both Governments have published guidance in relation to this.

For churches in England, the relevant guidance can be found at:

<https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-from-4-july>

For churches in Wales, the guidance can be found at: <https://gov.wales/guidance-reopening-places-worship-coronavirus-html> .

For guidance about meetings such as leadership team meetings or other gatherings please see our leaflet on reopening church buildings (please see the link above).

Before re-opening for private prayer and/or services in accordance with the relevant official guidance, churches should consider, as part of their risk assessment, how they would be able to re-open whilst observing social distancing and implementing other COVID-19 mitigation measures. For more information, please see our guidance on reopening church buildings, a link to which can be found at the beginning of this section.

There is no requirement to re-open and a church may decide, having undertaken a risk assessment, to delay re-opening until it feels that it is safe to do so or, perhaps, to only open for private prayer.

### Sales and Purchases of Property

In England, Government guidance has been updated and can be found here:

<https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak>



Churches that have already exchanged contracts in relation to a property transaction would normally have to complete them in accordance with the terms of the contract unless alternative arrangements can be negotiated between the parties. Any such arrangements should be formally documented between the parties' solicitors. We are urged by the Government to adapt and be flexible.

Government guidance in England is that, where someone is self-isolating, a move should be delayed until all members of the household have come to the end of their self-isolation period even when contractually committed to move. Where contracts have not yet been exchanged, conveyancers will need to include appropriate clauses in contracts to provide for this. The Government guidance goes into detail about viewings and other aspects of the process.

In Wales the official guidance can be found here: <https://gov.wales/moving-home-during-coronavirus-pandemic#section-44997> .

### Construction Projects

In England, the Government guidance now encourages the construction industry to be open. Churches whose construction projects or planned maintenance and repair have been on hold during the lockdown may proceed with these subject to a satisfactory risk assessment, compliance with the relevant guidelines and social distancing where appropriate.

Government guidance can be found here: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/construction-and-other-outdoor-work>

In Wales, work that cannot take place from home may proceed with all reasonable measures to maintain social distancing in the workplace. Please see:

<https://gov.wales/taking-all-reasonable-measures-maintain-physical-distancing-workplace>

<https://gov.wales/construction-and-outdoor-work-coronavirus-workplace-guidance>

### Routine Maintenance of Grounds

In England, where this has been previously suspended, it seems that this may now resume. Even though the point is not specifically dealt with in the Government's guidance, people may now spend time outdoors, take unlimited exercise and even meet up with up to six people from different households provided that social distancing is observed. Maintenance of church grounds would not seem to be inconsistent with the spirit of the guidance and indeed is useful as part of managing health and safety risks for people using burial grounds and other open space in accordance with the Government's guidance. More guidance on what may and may not be done can be found here:

<https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do>

In Wales, providing voluntary or charitable services or working where it is not reasonably practicable to do so from home appears to be a reasonable excuse for being away from home. People may also take local exercise and meet up with one or more persons from one other local household provided that social distancing is observed. It may, therefore, be additionally arguable that physical activity undertaken maintaining the church grounds by someone living locally and, ideally, within walking distance, would be permitted exercise. Individual churches will need to exercise their own judgment and common sense in relation to this issue. For further guidance generally about what is permitted please see <https://gov.wales/coronavirus-regulations-guidance>.



## Burial Grounds and Church Open Spaces

In England and Wales people are entitled to visit burial grounds to pay respects to a member of their household, a family member or friend provided they observe the general rules to limit the spread of the coronavirus.

There is a section on Outdoor Worship in the Government guidance applicable to places of worship England. Please see: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july#section4>

Similarly, the guidance applicable to churches in Wales ( <https://gov.wales/guidance-reopening-places-worship-coronavirus-html> ) deals with outdoor worship (which is possible for up to 30 people in Wales).

## Informal Hirings

In Wales, where the church's premises are let out under casual hiring agreements, for example, for exercise classes or social gatherings, these arrangements are still not permissible and the income will be lost. A church still seeking to terminate such arrangements should check the terms of any agreement and offer refunds where appropriate.

In Wales, church Halls usually used for community purposes may be classed as community centres and, as such, must remain closed except to provide essential voluntary services or public services upon the request of the Welsh Ministers or a local authority.

In England, hiring of church halls may now be permitted in appropriate circumstances. The relevant guidance can be found here: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities> . It may now be possible (subject to a risk assessment) for hirings to take place in relation to activities that are now permitted at this stage of the Government's recovery plan and in accordance with their social distancing and other guidance. From 25 July, indoor sporting facilities, fitness centres and dance studios will be allowed to open and multi-use community venues wishing to be involved in the provision of such activities should read the guidance on indoor facilities which can be found here: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/providers-of-grassroots-sport-and-gym-leisure-facilities>

For further information on the use of the church for other activities please see our leaflet on reopening church buildings: [https://www.baptist.org.uk/Articles/582203/Coronavirus\\_Guidance\\_on.aspx](https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx) .

Any decision about hiring church premises should be made carefully on a case by case basis and following a risk assessment taking into account all relevant factors. The church should also assess whether the benefits of the arrangement would outweigh the disadvantages. All hirings should be made using an appropriate written agreement with any special COVID-19 related requirements e.g. wearing of facemasks, social distancing and cleaning being specifically agreed in writing.

## Landlord and Tenant Issues

Generally a landlord is not permitted to prevent or interrupt its tenant's use and occupation of leased premises. Whether a tenant should be allowed to continue to use the premises will depend on a number of factors such as the overall levels of risk, the type of the property, its location, use, the terms of the lease and any relevant legislation or Government guidance. It is essential that, in such circumstances, the church has early discussions with the tenant, monitors the situation closely and may need to take legal advice if considering any formal action.

## Rent Concessions in Commercial Leases

These are difficult times for many businesses. Whilst business rates relief and Government financial support packages may help some stay viable, many may struggle to pay their rent. Often Leases do not contain 'force majeure' clauses which are used in other types of contract to cater for events beyond their control that may make performance of the contract impossible. Furthermore, traditional lease rent suspension clauses are unlikely to cater for the Covid-19 pandemic.

The landlord's usual remedy of forfeiting the lease for non-payment of rent or other sums due under the lease is suspended until 30 September 2020 and this date may yet be extended by the Government. Nevertheless, rent will still accrue during this period and be payable by the tenant (usually with interest) unless there has been some contrary agreement between the landlord and the tenant. In the circumstances, the most pragmatic solution may be to negotiate a realistic plan for payment with the tenant.

The Government has published a voluntary Code of Practice for commercial property relationships during the pandemic which encourages a collaborative approach between landlords and tenants where tenants are struggling to afford their rent and service charges. It can be found here:

<https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector/code-of-practice-for-commercial-property-relationships-during-the-covid-19-pandemic>

Commercial tenants may seek rent concessions such as rent-free periods, deferred rent, reduced rent or similar arrangements. The church should balance forgoing monies to which they are lawfully entitled against the potential risks to future income of having a tenant that is in financial difficulties and potential reputational damage to the church. When coming to any decisions, church charity trustees should always consider how the best interests of the church charity are served. It is appropriate for the charity trustees to consider the medium and long term situation and the potential for a tenant to become insolvent. In such circumstances, even if the church regains possession of the property, in the current climate there may be very little realistic possibility of the property being re-let. A church may, therefore, prefer to defer rent rather than write it off completely. Any agreements relating to such matters should be properly documented to prevent future disputes and churches may wish to contact [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk) about this in the first instance.

Some commercial premises let by churches may have been vacated, for example, because the law has required this or they may have been closed for commercial reasons. Other premises may have continued to be used, for example, by a foodbank, a business where it has not been reasonably practicable for all staff to work from home, or a pre-school which has remained open for vulnerable children and the children of key workers.

- *Pre-schools*

In England, the Government has revised its guidance and, from 1 June 2020, the Government is encouraging children in early years to return to their childcare settings. The guidance can be found here:

<https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures/coronavirus-covid-19-early-years-and-childcare-closures>

There is no requirement for pre-schools to re-open on that date. However, churches who have pre-schools or nurseries tenants which have not remained open should be aware that they may wish to re-open on 1 June. Where a pre-school has remained open, it may now expand its activity to receive children other than those that are vulnerable or that have key workers for parents.

Other relevant guidance relating to pre-schools can be found here:

<https://www.gov.uk/government/publications/actions-for-educational-and-childcare-settings-to-prepare-for-wider-opening-from-1-june-2020>

<https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures#history>

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care>

The Early Years Alliance has provided detailed guidance in relation to coronavirus and pre-schools. This can be found here: <https://www.eyalliance.org.uk/coronavirus-info-for-nurseries>. They also have information about business support at: <https://www.eyalliance.org.uk/coronavirus-business-support-nurseries> and more general information: <https://www.eyalliance.org.uk/nurseries-childminders-reopen-coronavirus-lockdown>. The Early Years Alliance also provide further information about other issues such as infection control and funding issues on their website.

For churches that let self-contained premises to a pre-school, management of the return to school will largely be a matter for the pre-school. However, where, for example, a pre-school occupies a church hall with facilities such as toilets that are shared by other users, the church would wish to be sure that COVID-19 is appropriately managed for the benefit of other users of the space or shared facilities. (See the following general considerations below).

The Welsh Government has announced that schools in Wales are set to open for a four-week term from 29 June. Guidance for childcare providers can be found here: <https://gov.wales/childcare-under-five-year-olds-coronavirus-covid-19>.

- *General Considerations Relevant to Commercial Tenancies as the Lockdown Eases in England*

In England, the Government's message remains that workers should continue to work from home wherever possible. However, where this is not possible for a church's commercial tenants they will be looking at making their premises 'COVID-19 secure'. Most workplaces will need to take measures to ensure social distancing at work wherever possible. As part of this they may wish to make physical alterations to the property such as partitions or screening. A tenant may also wish to alter the permitted hours of use to accommodate staggered start times. Whether or not such changes are permitted without formal consent would depend on the terms of the lease. Where a church's consent is required it is important that this be appropriately legally documented.

The impact of lockdown easing on a church as a landlord of commercial premises will largely depend on the physical configuration of the premises. Where a tenant's premises are entirely self-contained then, other than perhaps in relation to proposed physical alterations or changes of times of occupation, the COVID-19 security of the premises will be a matter for the tenants for as long as the lease continues.

However, where a church as landlord retains responsibility for common parts such as stairwells, corridors, lobbies, toilets etc, the church would need to make these areas as COVID-19 secure as reasonably practicable for the benefit of all users. Under health and safety legislation a person in control of premises has a duty to other people who may be affected by their conduct to ensure that, so far as reasonably practicable, they are not exposed to risks in respect of premises. A church landlord who has retained responsibility for common parts would be subject to this duty and the duty would apply to the risks posed by COVID-19 in the same way as any other health and safety hazard. Therefore, considering COVID-19 as part of a risk assessment is important.

Appropriate measures may include implementing clear one-way systems in walkways to facilitate social distancing, increased cleaning and deep cleaning of common parts, non-touch doors, more frequent refuse removal, a requirement to wear face coverings and even preventing some areas being used. Many leases contain a provision allowing a landlord to make regulations regarding the use of the

premises and common parts upon which a church landlord could rely. Any regulations should be clear, in writing, and communicated to all relevant tenants. Where a church landlord incurs additional costs as a result of these measures, it will depend on the individual leases whether these costs can be recovered from the tenants through the service charge. Churches requiring further advice may wish to email: [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk) in the first instance. Churches should also be sure to take into account any requirements from the church's insurer in relation to such matters.

The government has issued guidance in relation to cleaning which can be found here:

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>

Where a building requiring cleaning is a listed building or of historic importance, please see the guidance from Historic England.

<https://historicengland.org.uk/coronavirus/historic-places/cleaning-historic-surfaces/>

Where a lease comes to an end the church should consider COVID-19 as part of its overall risk assessment. This may require, for example, a deep clean to take place after tenants have vacated. As the economy recovers, a church landlord of a vacant commercial unit may find it difficult to attract new tenants for a while.

## **Residential Leases**

It is anticipated that many residential tenants may have difficulties paying their rent. The Government has encouraged landlords to offer support to tenants who may see their income cut or fluctuate. Good communication with your tenants is vital at this time.

As with commercial lettings, there is a balance to be struck between ensuring that the church charity receives all sums legally due to it and wider considerations such as reputational risk and medium term financial considerations of keeping a tenancy agreement in place at a time when finding replacement tenants may be difficult for a while. If a tenant is struggling to pay rent it is likely that some reasonable practical negotiated solution will be the best approach. The church may wish, for example, to agree for arrears to be paid at a later date or make some other rent concession. Churches, however, may not wish to be too quick to write-off rent altogether as Local Authorities may be able to offer support to tenants experiencing financial hardship and tenants whose circumstances may have changed may qualify for state benefits to help them pay their rent. Any rent concessions should be documented and churches may wish to email [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk) with any queries.

The Government is discouraging landlords from commencing or continuing eviction proceedings at this time unless there is a very good reason for doing so. However, even if a church did wish to terminate an assured shorthold tenancy, notice periods for seeking possession of residential property given between 26 March 2020 and 30 September 2020 have increased to three months and all court proceedings for eviction have been suspended until 23 August. These provisions may be extended.

A landlord's repairing obligations remain the same and they still must ensure that properties meet the required standard.

In England, the Government guidance is now that, other than where people are self-isolating or shielding, tradespeople can visit people's home to carry out work or maintenance provided that it is carried out in accordance with the relevant guidance: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/homes>. However, in cases where someone is self-isolating or shielding, no work should be carried out in the home unless it is to remedy a direct health and safety risk. In such cases, prior arrangements should be made to avoid any face to face contact, to ensure social distancing

and that appropriate steps can be taken to maintain good hand hygiene, for example, when answering the door.

As for gas inspections, in England the Government's position is that landlords should take all reasonable steps to carry out annual gas safety checks. However, where someone at the property is self-isolating or shielding, the gas safety check can be delayed until after the isolation period has ended. For those who are shielding, an inspection or repair should only be carried out if there is a direct gas safety risk. Further guidance is available at <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-andguidance/landlords/>. Where someone at the property is clinically vulnerable but not shielding, prior arrangements such as those referred to in the previous paragraph should be made before undertaking the check and all work should be carried out in accordance with the 'working safely' guidance referred to above.

In Wales, Government guidance is that any non-urgent visits to properties should be postponed. Urgent health and safety repairs, however, must still be made. The Government guidance gives a list of examples of these such as: a leaking roof; broken boiler, plumbing issues that mean there is no washing or toilet facilities; a broken fridge or washing machine, security critical issues such as a broken window or external door and broken facilities that are relied upon by a disabled person. Where an urgent health and safety repair affects a person who is self-isolating medical advice should be followed. Further guidance can be found at: <https://gov.wales/coronavirus-covid-19-guidance-for-landlords-and-managing-agents-in-the-private-rented-sector-html> . Information about gas safety can be found at <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/>

### **Where the Church is a Tenant**

Please see the Government's guidance for landlords and tenants which can be found at: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

A reduction in income may lead to the church having difficulty in paying its rent. The Government has published a voluntary Code of Practice for commercial property relationships during the pandemic. This encourages a collaborative approach between landlords and tenants where tenants are struggling to afford their rent and service charges. It can be found here: <https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector/code-of-practice-for-commercial-property-relationships-during-the-covid-19-pandemic> In appropriate circumstances a church may need to seek to negotiate and document some concession with its landlord. In the first instance a church may wish to seek guidance from us.

### **Use of Property Trust Monies**

Where a church has sold property, the proceeds of sale may be held by a Baptist trust corporation (e.g. the BUC) for the benefit of the church in a trust fund account. Depending on the trusts that govern the use of the fund, it may be possible for a church to draw upon the trust money to support the church. However, many trust funds can only be used for limited purposes, for example, to improve or redevelop church buildings, to purchase new church property or for other capital expenditure. Some trusts are wider in scope and may be used to fund expenditure in connection with the church's charitable purposes. The BUC will not be able to release trust funds for purposes that do not fall within the trusts. If a church thinks it may have a relevant trust fund and wishes to use it please contact us.

Ordinarily, the BUC would wish to see a resolution from a church members' meeting in relation to the use of trust monies. However, in the current circumstances the BUC is taking the view that a church meeting may not be necessary before funds are released. Where a church members' meeting is not possible (see guidance above about church members' meetings), we would ask that the church leadership team meets remotely e.g. by video conferencing, to consider how much is needed to be

released from the trust fund and for what purposes that money will be used. All decisions should be carefully minuted. If a church members' meeting is not possible remotely, we recommend that the leadership team contacts all the church members to inform the members of the proposal to use a specified sum from the trust fund for stated purposes and invite them to agree or object within a reasonable time on the understanding that the leadership team will make a decision on behalf of the church with a confirmatory resolution to follow in due course.

Hopefully with a clear decision from the majority of members, the Leadership team can hold another meeting in which it can decide, on behalf of the church, to use the amount required from the trust fund for the proposed purposes. The BUC will proceed on the basis of the leadership team resolution on the understanding that a confirmatory members meeting will follow at some point in the future. You should send the resolution to us with a formal request for release of the money by email to [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk).

In order for the BUC to demonstrate compliance with its duties as Holding Trustee, it is preferable to release a number of smaller amounts on different occasions over time than to simply release one large amount all at once. To save having to hold multiple meetings, church leaders may wish to seek authorisation from the membership for the use of the largest sum they think will reasonably be needed for the specific purposes identified and pass a resolution in the leadership team meeting to this effect. They may then wish to apply to the BUC for this sum by a number of instalments over time. We will be happy to discuss individual arrangements with you in greater detail if you wish.

### **BUGB Financial Assistance Support Scheme**

Churches experiencing financial difficulties may be able to take advantage of the BUGB's Financial Assistance Support Scheme. For further information, please see: [https://www.baptist.org.uk/Groups/338915/Coronavirus\\_financial\\_support.aspx](https://www.baptist.org.uk/Groups/338915/Coronavirus_financial_support.aspx)

### **Execution of Documents**

[Please refer to Appendix 1 for detailed advice from Anthony Collins LLP on executing documents during the current lockdown. \(This has been updated by us to reflect recent changes\).](#)

### **Further Guidance**

The Charity Commission's 'Coronavirus (COVID-19) guidance for the charity sector' can be found [here](#).

There is also extensive guidance on the Baptists Together website at [www.baptist.org.uk/coronavirus](http://www.baptist.org.uk/coronavirus)

Any queries in relation to this guidance may be addressed to the Legal & Operations Team using [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk) and we will respond as soon as we are able.

## **Appendix 1 - Execution of documents**

Social distancing and self-isolation brings some challenges as regards signature of documents at this time. Since postal services are still working it is still possible for documents to be signed in hard copy and passed on as necessary. We have set out below some specific guidance as regards signing documents at this time.

How documents are signed will depend on the structure of the church as rules are slightly different for unincorporated association churches and charitable incorporated organisations. In either case we would recommend that the authority to sign documents on behalf of the church is clearly minuted (even if at this time the trustees' meeting needs to take place by "virtual means").

### **Charitable incorporated organisations**

The CIO approved governing document for Baptist Church provides that deeds are validly signed if signed by at least two trustees. When entering into a deed on behalf of the CIO the trustees' signatures do not need to be witnessed.

There are limited circumstances in which trustees would also need to sign a document as individual trustees (rather than on behalf of the CIO). Your legal advisors should let you know these limited circumstances should they arise and any additional formalities required.

### **Unincorporated associations**

For churches which are unincorporated associations any deed will require the signature of at least two trustees whose signatures have been witnessed. Technically all of the trustees would need to sign but the trustees can pass a resolution under section 333 of the Charities Act 2011 which authorises two of their number to execute the deeds/documents on the church's behalf. If the trustees have not already passed a resolution generally providing for two trustees to sign on behalf of all of the trustees we would suggest a resolution is passed in the following form at a trustees' meeting:

*"the Trustees agreed pursuant to section 333 of the Charities Act 2011 that any two of their number may sign all appropriate documentation on behalf of the Trustees to effect the decisions of the Trustees for the period of six months from the date of this meeting"*

### **Witnesses**

Although it is best practice to have an independent witness, generally there is no requirement in law for the witness to be independent. Therefore, so long as a person is not party to the deed then he/she can sign as witness. Please note that where a deed is to be sent to the Land Registry, it recommends that the witness should not be a close family member, however a witness may be a spouse, civil partner or cohabitee if this cannot be avoided. A witness could also be a signatory's family member or neighbour but we recommend that the witness be at least 18 years old.

### **Contracts and Electronic signatures**

There may be some contracts (i.e. not deeds) for which delegated authority to enter into the arrangement has been/is given to a particular individual or individuals. Any delegated authority to enter into the contract needs to be clearly recorded for the church's records. In some circumstances it may be possible to rely on electronic signatures to execute some documents Even some deeds relating to land may now be electronically executed using what are called 'mercury signatures'. You should seek advice on the appropriateness of this method for the document being executed because there are some situations in which a wet ink signature is still advisable.



## Appendix 2 – List of Amendments to this Leaflet made since 10.06.2020

<i>Date</i>	<i>Section</i>	<i>Page</i>
10.06.20	Preparing for the Next Stage of Lockdown Easing	6
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15.06.20	Preparing for the Next Stage of Lockdown Easing	6
22.06.20	Preparing for the Next Stage of Lockdown Easing	6
22.06.20	Burial Grounds and Open Spaces	8
24.06.20	Preparing for the Next Stage of Lockdown Easing (now called 'Easing of Restrictions')	6
01.07.20	Information for CIOs and Companies: new statutory provisions (June 2020)	3-4
01.07.20	Property Issues – recording who Enters Property (inclusive)	5-6
01.07.20	Easing of Restrictions	6
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01.07.20	Informal Hirings	9
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01.07.20	Pre-Schools	10
01.07.20	Where the church is the Tenant	13
13.07.20	Church members meetings (to reflect opening of places of worship)	2 - 3
24.07.20	Property Issues	6
24.07.20	General Property Considerations (Amended throughout the section from 'Inspections, Repairs and Maintenance' to 'Burial Grounds and Church Open Spaces' (inclusive)	7-9

24.07.20	Informal Hirings	9
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Association Trust Company	Contact
<b>Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd</b>	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
<b>Heart of England Baptist Association</b>	Heart of England Baptist Association BMS Birmingham 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
<b>London Baptist Property Board</b>	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
<b>Yorkshire Baptist Association</b>	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
<b>West of England Baptist Trust Company Ltd</b>	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff in the Legal and Operations Team at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

**If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details is provided above. If you have private trustees they too should be consulted as appropriate.**

**Contact Address and Registered Office:**

Support Services Team, Baptist Union of Great Britain, Baptist House, PO Box 44,  
129 Broadway, Didcot OX11 8RT

Tel: 01235 517700 Fax: 01235 517715 Email: [legal.ops@baptist.org.uk](mailto:legal.ops@baptist.org.uk)

Website: [www.baptist.org.uk](http://www.baptist.org.uk) Registered CIO with Charity Number: 1181392

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