

# CHOIRS AND THE ‘RULE OF SIX’

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**T**here are around 40,000 choirs active in the UK, involving 2.4 million singers<sup>1</sup>. Almost all of those choirs have been unable to meet since March 2020 because of restrictions on gatherings imposed in response to the COVID-19 pandemic. Many had been on the point of starting to sing together again - or in some cases had managed one or two tentative reunions - before new rules came into force on 14 September. Those rules, and the accompanying government guidance published the same day, have thrown them back into doubt and confusion.



**The purpose of this article is to provide some clarity about what choirs currently can and can't lawfully do.**

The first point to note is that there is a distinction between the law on one hand, and government guidance on the other. The relevant law for England is currently contained in the Health Protection (Coronavirus, Restrictions) (No.2) (England) Regulations [2020/684](#). There is also a substantial quantity of government guidance, which does not in itself have the force of law. Some of that is an attempt at a plain English explanation of what the regulations mean, and some of it contains advice about what the government thinks people ought to do, over and above what the regulations require of them. The guidance itself repeatedly fails to make that distinction clear, and often mis-states or oversimplifies the law<sup>2</sup>.

At a time when our everyday liberties are under unprecedented pressure, this is worth emphasising. The government cannot legislate or create criminal offences by issuing guidance.

That means our main focus here is on the regulations. The key provision that controls “gatherings” - including choir practices - is regulation 5:

<sup>1</sup> According to research done in 2017 - see eg [https://www.rhinegold.co.uk/choir\\_organ/voices-now-reveals-results-big-choral-census/](https://www.rhinegold.co.uk/choir_organ/voices-now-reveals-results-big-choral-census/)

<sup>2</sup> This problem is interestingly explored by Tom Hickman of UCL and Blackstone Chambers in Hickman, Tom, The Use and Misuse of Guidance during the UK's Coronavirus Lockdown (September 4, 2020). Available at SSRN: <https://ssrn.com/abstract=3686857> or <http://dx.doi.org/10.2139/ssrn.3686857>

(1) During the emergency period, no person may participate in a gathering which consists of more than six people unless—

(a) all the people in the gathering are from the same household, or are members of two households which are linked households in relation to each other,

(b) the gathering is one to which paragraph (2) or (2A) applies and the person concerned participates in the gathering alone or as a member of a qualifying group, or

(c) paragraph (3) applies.

So, if you want to hold a choir practice, you will have to bring yourself within (a), (b) or (c). Unless you're a von Trapp and can muster a whole choir from your own household, (a) won't help.

Subparagraph (b) doesn't help much either. It might perhaps be argued that a choir could lawfully meet if it divided itself into groups of no more than 6 singers, each strictly forbidden to mingle with any other groups or individuals. We don't think this is feasible, so we won't pursue that possibility further. To this extent our advice is in line with paragraph 3.19 of the Cabinet Office [FAQs](#) on the subject, which say:

### **3.19 Can I go to my hobby club / amateur musical group / other leisure activity?**

It is against the law to gather in groups of more than six, where people are from different households or support bubbles. The rule above does not mean that there cannot be more than six people in any one place. All activities for under 18s are exempt. There can be multiple groups of six people in a place, provided that those groups do not mingle.

In practice, however, this will make it difficult for some activities to take place without breaking the law. Activities where there is a significant likelihood of groups of more than six mingling – and therefore breaking the law – should not take place until further COVID-19 Secure guidance has been developed and approved to enable the activity to happen safely. This may include extended tour groups, large banquet dinners, society or club meetings, or amateur music or drama rehearsals<sup>3</sup>.

That looks pretty discouraging across the board for amateur choirs. Even more discouraging is a revision published yesterday to the [Performing Arts](#) section of the DBEIS/DCMS guidance *Working safely during coronavirus (COVID-19)*:

**! Non-professional activities should not take place that require social distancing to be compromised.**

Non-professionals are restricted by rules on meeting with others safely. This means that non-professional performing arts activity, including choirs, orchestras or drama groups can continue to rehearse or perform together where this is planned activity in line with the performing arts guidance and if they can do so in a way that ensures that there is no interaction between groups of more than 6 at any time. If an amateur group is not able to ensure that no mingling takes place between these sub-groups of no more than 6 (including when arriving at or leaving activity or in any breaks or socialising) then such non-professional activity should not take place.

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<sup>3</sup> The [Guidance for the safe use of multi-purpose community facilities](#) is to similar effect.

Don't despair. What all of this guidance fails to mention is the effect of regulation 5(1)(c): the final exception to the general rule prohibiting gatherings of more than six people is "if paragraph (3) applies." And even the exclamation mark at the beginning of the paragraph heading doesn't convert guidance into law; it's still only guidance.

Paragraph (3) starts "This paragraph applies where-," and then it lists in subparagraphs (b) to (m) a variety of different circumstances. Most of those have nothing to do with any possible choir practice<sup>4</sup>, but subparagraph (c) reads:

(c) the gathering is reasonably necessary—

(i) for work purposes, or for the provision of voluntary or charitable services,

(ii) for the purposes of education or training,,

(iii) ...

Many amateur choirs - perhaps most - are likely to fit into one or both of these categories. The more obvious one is "education or training." Many bodies offering a programme of evening classes include one or more choirs, but the character of a choir as a form of adult education isn't determined by the nature of the body providing it, but by the nature of activities that it undertakes. Most choirs are directed by a conductor who undertakes to teach the choir to sing pieces of music - ranging from arrangements of popular songs or songs from musicals to substantial classical choral works; many will teach some music theory and/or singing technique along the way<sup>5</sup>. To the extent that 'education' and 'training' are different things, any systematic rehearsal of a piece of music – especially with a view to ultimate performance – is likely also to fall within the meaning of 'training.'

This won't work for absolutely every choir: some are in truth simply a group of musicians meeting as equals - even if one generally takes charge of rehearsals - for the sheer pleasure of singing together. But for almost any amateur choir directed by a professional conductor, the rehearsals will be gatherings for the purposes of education, and very likely training too.

So is the gathering "reasonably necessary" for the purposes of that education or training? We think it clearly is: the time lag in all remote conferencing platforms makes it impossible for a choir to sing together. Anyone who has attended a "Zoom rehearsal" will know what an aimless and dispiriting experience that is.

If the choir is conducted by someone who is paid to do so, then it might also be argued that the gathering was reasonably necessary "for work purposes." The choir director can't do her or his work without a choir to direct, after all. We are a little more dubious about the applicability of this exemption: the gathering is necessary for the conductor to do their work, but we are not sure that it is quite realistic all the same to describe the gathering as being "for work purposes." The central purpose of the rehearsal is educational and/or musical; the fact that the conductor is at work seems to us to be ancillary to that. But in practice, if the conductor is a professional and the choristers are amateurs, the gathering will almost certainly be for educational purposes anyway, so it is unlikely to matter whether it is also reasonably necessary for the purposes of work as well.

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<sup>4</sup> We have considered and rejected as musically unsatisfying the possibility of rebranding a community choir as an atypical protest group, and rehearsing only protest songs until the crisis is over.

<sup>5</sup> The contrary argument would be that only education in formal educational settings should count as 'education' for these purposes. We are not persuaded by that, because if that had been the intention, it would have been easy enough to make explicit by limiting the exemption to education taking place in or under the auspices of schools, universities, HE colleges, adult education colleges etc. In the absence of a limitation of that nature, we think the word 'education' should be given its natural meaning.

Slightly different considerations may apply to those church or cathedral choirs that comprise mixed groups of paid adults singing together with a children’s choir. In those cases, the gathering is necessary for the purposes of the adults’ work; there is no express (nor in our view implied) requirement that, for a gathering to be reasonably necessary ‘for work purposes,’ all of those participating in the gathering must be working.

Regulation 5B places parallel restrictions on holding or being involved in the holding of a relevant gathering (so that organising an event is prohibited as well as merely participating in it). Regulation 5B(4)(c)(i) and (ii) repeat the same exceptions for the purposes of work and education, so if participation in the gathering is lawful by virtue of regulation 5(3)(c)(i) or (ii), so is holding it or being involved in holding it.

So far as the law is concerned<sup>6</sup>, that’s really all there is to it:

**So long as the choir can reasonably be regarded as a form of adult education, rehearsals can lawfully go ahead, and there is no current legal limit on the size of rehearsals; nor is there any legal requirement to take any specific precautions.**

But we shouldn’t finish without saying something more about precautions. Some of the kinds of event listed at regulation 5(3) are qualified by a requirement that the “gathering organiser” complies with regulation 5(5G), which concerns the conduct of a formal risk assessment and the taking of all reasonable steps to limit the risk of transmission of the coronavirus. That requirement is not imposed on a gathering that relies on the ‘work’ or ‘education’ exceptions, so choirs whose rehearsals fall within one or both of those exemptions are not bound by it.

But the risks are real, so our personal view<sup>7</sup> is that choirs should - as a matter of good practice - carry out a risk assessment before resuming rehearsals; and take all steps they reasonably can to reduce those risks, including in particular limiting attendance to a number that can sing well-spaced in the venue in question. Current government guidance<sup>8</sup> is to keep a distance of 2m from non-household members, but consider increasing these distances if possible, bearing in mind evidence that singing increases the quantity of aerosol and droplet particles expelled, and the distance over which they can travel<sup>9</sup>. Choir members should be assured that they are under no pressure to attend, and should only do so if they are comfortable with the level of exposure in light of their own circumstances and any particular vulnerabilities.

A risk assessment needn’t be elaborate: here’s an example drawn from a small choir rehearsing in a converted barn that is part of private dwelling. Note that this is specific to a particular choir and space – if you use it as a template, you’ll need to customise it for your own event and resources.

Source of hazard	action (participants)	action (hosts/MD)
door handles	sanitise or wash hands thoroughly on arrival	clean door handles (and lavatory bolt) before each rehearsal; provide hand sanitiser
chairs	keep to the same chair	clean chairs and piano stool before each rehearsal
mugs	only touch the mug you are going to use - resist polite impulse to pass mugs to others	pour teas/coffees for all; wash or sanitise hands before serving coffee
sheet	make sure to have all the music required	

<sup>6</sup> Except in parts of the country where a more stringent local lockdown has been imposed.

<sup>7</sup> Not as lawyers at this point – just as responsible neighbours and choristers.

<sup>8</sup> Which it is worth stressing again does **not** have the force of law.

<sup>9</sup> This evidence is outside our field of expertise, so we won’t link to examples: our readers are as capable as we are (and in some cases no doubt much more so) of finding and evaluating the latest research in this rapidly-developing field.

music/scores/ folders	for each rehearsal, so there is no need for music to pass from hand to hand or for sharing	
air	space as widely as possible for singing; maintain distance so far as possible during break; spend break outdoors, weather permitting	keep doors open; serve tea/coffee outdoors (weather permitting in both cases); keep volume of singing down where possible, e.g. when learning notes
lavatory	use single-use hand towels to dry hands, then wipe flush control, taps, door handle and bolt; drop towel in basket	clean toilet seats, flush controls and hand basins (including taps) before each rehearsal; provide single-use hand towels and a basket in each lavatory
other people	don't attend if you or any member of your household have a temperature, or other symptoms associated with Covid-19	limit total attendance to a maximum of 12 <sup>10</sup> people; space chairs widely; cancel if any member of the household has symptoms

Finally, note that there are many other sources of advice and guidance on what precautions might be taken, and there may well be government guidance specifically directed to choirs published in the coming days or weeks. All of that is worth taking into account, but none of the specific precautions that have been suggested or may be suggested are compulsory: they are just advice. If you are running a choir, you are entitled to consider the circumstances and needs of your choir, and take what steps you think reasonable and practicable. And then sing.

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## **ABOUT THE AUTHORS**

[Keith Bryant QC's](#) wide experience includes advising and acting for commercial and public sector organisations, trustees, government departments and agencies, individuals and unions. His practice is focused on pensions law and employment law and the areas of overlap between the two. He is also increasingly involved in cases with a financial services aspect. He sang as a choral scholar / lay clerk for many years and now sings regularly, if less frequently, with various choirs.

[Naomi Cunningham](#) has specialised in employment and discrimination law throughout her career. She acts for a mix of public and private sector employers, large and small, and individual employees and trade unions, and is currently instructed in mass equal pay claims against Asda and Tesco. She sings with a community choir and a chamber choir, both in East Sussex.

*We have made every attempt to state the law accurately in this article, and the views expressed here are governing our own actions, but we can take no responsibility for decisions made in reliance on it.*

<sup>10</sup> This number is chosen for this particular venue; in a larger venue, a larger choir will be able to rehearse.

