

**Directory on the
Ecclesiastical Exemption
from Listed Building Control**



BISHOPS' CONFERENCE OF ENGLAND AND WALES

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Note

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Contents

Page	4	Introduction
	5	Definitions
	5	The need for a faculty
	8	Listed buildings
	9	The Historic Churches Committee
	10	The procedure for applications
	14	Appeals
	14	Unauthorised works
	15	Monitoring
	15	Records and annual reports
	16	Emergency procedures
	17	Buildings no longer in use for worship
	19	Glossary

Directory on the Ecclesiastical Exemption from Listed Building Control

Introduction

1 Under the ecclesiastical exemption certain buildings in the ownership of the Roman Catholic Church in England and Wales are exempted from secular listed building controls, subject to approved alternative controls and procedures being exercised by Church authorities. The relevant legislation in England is the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 2010, and in Wales, the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order of 2018¹.

2 It has long been recognised that the right to religious freedom includes the right to freedom of worship, and that this has implications for the care of buildings built for such worship. It is the right and duty of the diocesan bishop to supervise the administration of temporal goods within his jurisdiction, and the duty of trustees to protect trust property vested in them. The Second Vatican Council and directives of the Holy See have reminded bishops of their need to exercise vigilance over the remodelling of places of worship and to protect works of art and sacred furnishings. The Church wishes to safeguard its precious patrimony of historic buildings and artefacts for present and future generations.

3 Government planning policy on the protection of the historic environment is published in the National Planning Policy Framework (NPPF), and charges local planning authorities to ‘conserve heritage assets in a manner appropriate to their

¹ The Ecclesiastical Exemption does not apply in the Crown Dependencies of the Isle of Man (Archdiocese of Liverpool) and the Channel Islands (Diocese of Portsmouth). However, proposals for listed churches may also be brought within the diocesan HCC’s remit, at the discretion of the Ordinary.

significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations'. It is these requirements in the Planning (Listed Buildings and Conservation Areas) Act 1990, the NPPF and the guidance in the related Planning Practice Guidance (PPG) to which denominational procedures have to be equivalent, in terms of due process, rigour, consultation, openness, transparency and accountability. Government requirements for denominational procedures are set out in Operation of the Ecclesiastical Exemption and related matters for places of worship in England. The related Code of Practice sets out the principles which a denomination's internal system of control over works to listed buildings should embody. Procedures and guiding principles for the operation of the exemption in Wales are set out in Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption (2018).

- 4 This Directory is issued by the Bishops' Conference of England and Wales and describes the scheme and the procedures which must be followed to obtain permission (known as a faculty) to carry out any relevant works to listed churches. It replaces all previous Directories and Guidelines and will be subject to periodic review by the Department for Christian Life and Worship of the Bishops' Conference. The Subcommittee for Church Patrimony (hereafter Patrimony Committee) has been charged by the Bishops' Conference with the oversight and implementation of the procedures, to the satisfaction of the Bishops' Conference and Government.

Definitions

- 5 An explanation of the terms used in this Directory is given in the Glossary at the end of the document.

The need for a faculty

- 6 No relevant works may be undertaken except with the authority of a faculty granted on behalf of the bishop in accordance with the

procedures described in this Directory. Faculty applications are determined by Historic Churches Committees (HCCs), acting on behalf of the bishop. Initial advice concerning the need for a faculty should be sought from the HCC Secretary.

7 Relevant works means:

- (i) any works (including partial demolition, alteration, repair or extension but excluding total demolition) which would affect the character of the relevant structure as a building of special architectural or historic interest; or
- (ii) any works affecting the archaeological importance of a relevant structure or archaeological remains existing within it or its curtilage;

The definition of relevant works extends to internal or external works carried out on:

- (i) any listed church, oratory or chapel owned by the diocese, a parish or any other ecclesiastical organisation which is subject to the diocesan bishop or an Ordinary and is being used primarily for worship;
- (ii) any listed ecclesiastical building belonging to a religious order, religious institute or society of apostolic life which is being used for ecclesiastical purposes;
- (iii) any object or structure within a listed church;
- (iv) any object or structure fixed to the exterior of a listed church;
- (v) In England, any separately-listed buildings or structures in the curtilage of a listed church, where such buildings or

structures constitute ecclesiastical buildings for the time being in use for ecclesiastical purposes. These buildings or structures might include listed campaniles, chest tombs, parish halls or rooms, school rooms, chancel houses, lychgates, shrines, monuments or boundary walls. The curtilage of a listed church is the single site in the ownership of the relevant organisation. In Wales, all buildings and structures within the curtilage of a listed church are included under the exemption, whether or not they are separately listed. In both countries, these provisions exclude presbyteries.

- 8 Church furnishings fall within the definition of ‘any object or structure within a listed church’, and are subject to faculty control if they are determined to be ‘fixtures’. Case law has established that the word ‘fixture’ need not be interpreted only in the literal sense of items which are cemented, screwed or otherwise fixed to the building, but may in some cases also encompass moveable items, such as statues and pews. The key considerations are:
- (i) The method and degree of annexation of the object to the building, the ease with which it can be removed and the damage caused to the structure or object by its removal; and
 - (ii) The objective and purpose of the annexation to the building – whether this was for the improvement of the building or for the enjoyment of the object itself ².
- 9 Ecclesiastical Exemption does *not* apply to (and hence listed building consent through the local planning authority will normally be required) for:

² <https://historicengland.org.uk/advice/hpg/has/listed-buildings/>

- (i) Works to ‘premises used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office³. Therefore presbyteries (even if attached to or within the curtilage listed churches) and residential accommodation in convents and monasteries are subject to listed building consent rather than faculty approval. However, in the case of presbyteries, parishes should seek the advice of the HCC before applying for listed building consent, and the HCC may be consulted by the local authority;
 - (ii) Catholic chapels in, attached to, or within the boundaries of private houses (unless in the ownership of a diocese, parish, religious order or another ecclesiastical organisation subject to the jurisdiction of the diocesan Bishop);
 - (iii) Cases of total demolition;
 - (iv) Works which are not undertaken by or on behalf of the owner of the building⁴.
- 10 Small like-for-like repairs, general maintenance and some minor works of alteration may not require a faculty. The advice of the HCC Secretary should *always* be sought and the need for a faculty established before such works are undertaken.
- 11 Most external works to buildings will *also* require planning permission from the local planning authority – there is no exemption from this requirement when it applies, or to the need for building regulations approval, where needed. Such consents must be obtained in *addition* to a faculty, and in the first instance the advice of the HCC Secretary should be sought.

³ S60(3) Planning (Listed Buildings and Conservation Areas) Act 1990

⁴ Section 7(2)(a) of 2010 Order

- 12 Those undertaking works to listed churches should always seek appropriate professional advice. In many cases this will involve the appointment of a conservation-accredited architect or surveyor, and this is a requirement of some grant-giving bodies. Quinquennial Inspection reports for listed churches should always be prepared by an experienced or accredited conservation architect or surveyor.

Listed buildings

- 13 A listed building is a building or structure of special architectural and historic interest which has been identified as such and included in a list published by the Secretary of State for Digital Culture, Media and Sport (DCMS) in England or the Welsh Historic Environment Service (Cadw) in Wales. Buildings are graded I, II* and II and are selected according to certain established criteria including age, architectural and historic significance and associations, building type, technological significance and authorship. All buildings constructed before 1700 and most constructed before 1850 are likely to be listed; following this the lists become selective during the nineteenth and early twentieth century and more selective for mid- and late-twentieth century buildings. Buildings less than thirty years old are not normally considered eligible, but may be considered if of outstanding importance and if under threat. Major churches of all periods and known authorship are likely to be listed. Dioceses in England are encouraged to include within the remit of the HCC all churches identified as possible candidates for listing under the ‘Taking Stock’ programme. The churches would then be treated as though they were listed until their listed status is formally resolved. If the DCMS subsequently decides not to list a church, it need no longer fall under the remit of the HCC.
- 14 Historic England guidance on listing criteria for churches can be found [here](#) and a broader introduction to nineteenth and twentieth century Catholic churches [here](#).

The Historic Churches Committee

- 15 Each diocese has a Historic Churches Committee (HCC), established by the bishop with its own statutes. An HCC may be set up for one diocese or may cover two or more dioceses. The statutes of a committee covering more than one diocese are approved by all the diocesan bishops concerned. Members of the HCC are appointed by the bishop or bishops concerned in accordance with the statutes. The committee acts in the name of the diocesan bishop in accordance with the statutes.

- 16 The membership of the HCC is defined in the statutes in accordance with several principles which ensure that the committee is able to come to an expert and independent view on matters before it. It will have a balance of members drawn from the various groups who have a legitimate interest in its decisions. (It is in order to retain this correct balance at all times that the statutes will provide for the committee's membership to be stable rather than rotating. The actual membership is therefore easily definable at any one time.) The membership will be comprehensive enough ordinarily to provide the necessary experience and expertise for most applications which the committee will be called upon to decide. The committee will have a Secretary, appointed by the bishop after consultation with the HCC Chairman. The role of the Secretary is to be the executive arm of the committee, and he or she will not be a member of the HCC. The Secretary should have sound organisational skills, capable of carrying out the functions of being clerk to the committee, and be available as the point of contact for anybody having business with the committee. He or she needs to be sufficiently well versed in historic buildings and their conservation, the planning system and the procedures described in this Directory to be able to provide reliable advice to the committee and others. The Secretary shall act as the person through whom any discretion to be exercised by the Chairman under the procedures is communicated.

- 17 A copy of the Statutes for the HCC will be lodged in the archive of each diocese covered by that committee and with the Patrimony Committee. Copies will also be given to members of the HCC, and to new members on appointment.

The procedure for applications

- 18 A site meeting and informal pre-application discussion with the HCC is encouraged, especially in complex cases. Applicants may also benefit from obtaining the early views of the diocesan Art and Architecture Commission and/or Liturgical Commission. In the case of a parochial building, the Parish Pastoral Council (if any) should be consulted. For property belonging to a religious order, further consent or consultation may also be required.
- 19 The use of electronic faculty submissions through the [Catholic Historic Churches website](#) is strongly encouraged, and better meets the Government's requirement for openness, transparency and parity with secular procedures. The website acts as a single reference point and database for the HCC, its churches and applications; applications are processed through it.
- 20 For non-electronic submissions, **four** copies of the application documentation must be submitted to the HCC for consultation with the statutory consultative bodies.
- 21 Applications must be submitted using **Form 1**. Documentation should normally include all of the following:
- a 1:1250 or 1:2500 location plan with the position of the building and the ownership boundaries clearly marked
 - For all but the most minor works, professionally-prepared plans, photographs and adequate specifications, sufficient to identify the building, illustrate its character, and explain the proposals

- Statements setting out a) the significance of the building and its setting, b) the impact of the proposed works on that significance and c) explaining why the proposed works are desirable or necessary. For statements of significance, the Taking Stock report for the church will be a good starting point. This should be expanded as necessary to provide the HCC and consultees with a full understanding of the proposal and its impact⁵. The degree of detail will be proportionate to the degree of significance, and the nature and complexity of the proposals
- In the case of proposals involving significant alterations to a diocesan building or a building belonging to a religious order, details of any advice received from a diocesan Art and Architecture/Liturgical Commission
- In the case of proposals involving a parochial building, a statement that the Parish Pastoral Council (if any) has been consulted
- In the case of proposals involving a building belonging to a religious order or one controlled by a non-territorial Ordinary, a statement that any required consent or consultation has been obtained or taken place.
- A copy of the most recent quinquennial report (if not already in the possession of the HCC). This will normally have been commissioned by the diocesan finance or property office. If one has not been prepared, or is not available, this should be stated.

22 Some of the above requirements may be relaxed by the Secretary if, in his or her opinion the works are of such a minor nature as not to require such documentation.

Acknowledgement and notification

23 The HCC Secretary will send **Forms 2 and 3** to the applicant, who must display Form 2 for a continuous period of not less than 21 days in a prominent position on the exterior of the building on or near its

⁵ See also <http://www.statementsofsignificance.org.uk/>

main entrance. If the building is not the parish church, a copy of Form 2 should be sent to the parish priest for display for a similar period in the parish church. Unless the application relates only to internal alterations to a Grade II building, the application must also be advertised once in an appropriate local newspaper, using the wording on Form 3.

- 24 The HCC Secretary will consult the statutory consultative bodies - local planning authority, Historic England or Cadw, and the national amenity societies. This process will take 28 days and should be undertaken concurrently with the public notices detailed above.
- 25 The applicant, all those consulted in accordance with this procedure and any person who submits written representations to the HCC Secretary in any particular application are referred to hereafter as ‘interested parties’ with respect to that application.

The procedure for determination

- 26 The HCC Secretary will ensure that the application, observations received as a result of the consultations, and written representations received from other interested parties are put before the committee for discussion and determination.
- 27 The applicant and/or up to two representatives are entitled to attend when the relevant application is being discussed and determined by the HCC. They may present their proposals to the committee and answer questions but may not participate in the committee’s discussion unless requested to do so.
- 28 The HCC may request the bishop to appoint a suitable adviser to advise it on applications requiring specialist expertise (for example concerning organs, stained glass or archaeological remains), if such specialist advice cannot be obtained from among its existing members.

- 29 When considering proposals, the HCC is under a specific duty to take into account, along with pastoral and liturgical factors, the desirability of preserving ecclesiastical listed buildings, the importance of protecting features of special historic, archaeological, architectural or artistic interest and any impact on the setting of the church.⁶
- 30 In determining the application, the HCC may decide to approve or refuse the application (whether fully or partially). If the committee approves the application or any part of it, it may grant a faculty either in the form applied for or as modified by the committee. The committee may also approve the faculty subject to conditions. A faculty will normally be subject to a time limit of three years.
- 31 All interested parties will be advised of the HCC's decision by the Secretary, using **Form 4**. In order to allow time for interested parties to lodge an appeal against the decision, the faculty will not be issued and no work may take place for at least 21 days after the date of the decision notice. After 21 days, if there has been no appeal, the Secretary will issue the faculty using **Form 5**, at which point the applicant may proceed in accordance with that document. The discharge of any conditions applied to an approved application is certified by the Secretary issuing **Form 6**.

Appeals

- 32 Any interested party may appeal to the bishop against the decision of the HCC, using **Form 9**. The bishop will not normally hear the appeal himself, but will normally establish a commission to hear the appeal on his behalf.
- 33 For the details of appeal procedures, please refer to the Bishops' Conference publication *Guidelines for Appeals*.

⁶ DCMS, *The Operation of the Ecclesiastical Exemption*, Annex A: Code of Practice, 2010

Unauthorised works

- 34 The Government has indicated that where the correct procedures are not being observed for listed church buildings, the ecclesiastical exemption may be withdrawn. Breaches of faculty control are therefore a serious matter. Where relevant works are undertaken without the authority of a faculty, or in breach of any conditions attached to a faculty, an order (**Form 13**) for work to cease may be served on the person responsible for the administration of the building. That person must follow the directions contained in the order and any subsequent directions of the HCC.
- 35 The situation must then be regularised by following the procedures described in this Directory. The building must either be returned to earlier appearance and condition (before the unauthorised works took place) or an application may be submitted to the HCC for the regularisation of the unauthorised works. Such an application will not necessarily be approved, and if it is refused in whole or in part, the necessary remedial works to return the building to its earlier appearance and condition must be undertaken without delay. In all these matters the directions of the HCC must be followed.

Monitoring

- 36 Within fourteen days of start of works the applicant must submit **Form 7** to the HCC Secretary. On completion of the relevant works, applicants must submit **Form 8** to the HCC Secretary. Form 8 must be signed by the applicant, and, where required by the HCC, countersigned by the applicant's architect, surveyor or other professional advisor, declaring that the work has been carried out in accordance with the faculty. (In the case of large, long or multiple works, the Committee may require that more than one Forms 7 and 8 are to be submitted.)

Records and annual reports

- 37 The HCC Secretary shall keep a record of all proceedings of the Committee together with copies of all forms sent or received in accordance with this Directory. The Secretary shall also keep copies of the relevant current Decrees and Statutes relating to the Committee. These records shall be kept in the diocesan offices (or an alternative venue designated by the HCC) in a form accessible to those with a right to see them. Some or all of these records may be placed on the Catholic Historic Churches website.
- 38 Interested parties or their representatives have the right to see the records relating to the application or applications in which they have such an interest. The diocesan bishop or religious superior or their representatives and designated members of the Patrimony Committee also have a right to see the records of the HCC. Members of the public may apply to the Secretary for access to the records, which will normally be arranged at a convenient time. The HCC should only refuse access to members of the public if they have good reason for doing so.
- 39 Each HCC is to produce an annual report. This should cover the calendar year, and a copy should be submitted to the Patrimony Committee by the following 1st March at the latest. The Patrimony Committee has oversight of the work of HCCs and is the point of contact with Government, Historic England, Cadw and other agencies in matters relating to the Ecclesiastical Exemption as well as wider policy matters, including grants. The annual report should set out clearly what applications and other matters have been considered by the HCC during the calendar year, to enable the Patrimony Committee to form a clear overview of developing trends. Annual reports should be placed on the Catholic Historic Churches website. On request, copies may also be sent to the DCMS, Historic England/Cadw the Joint Committee of the National Amenity Societies, or any others with a legitimate interest in the work of the HCC.

Emergency procedures

- 40 In cases of genuine **emergency** (i.e. where the interests of safety, health or the preservation of a building would be seriously prejudiced by waiting until the next meeting of the HCC) a provisional faculty may be granted (using **Form 14**) by the Chairman in consultation with the Vice-Chairman and the Vicar-General member (or equivalent) of the committee. In extreme cases this may be granted orally by the Chairman or Vice Chairman (and later confirmed in writing on Form 14). Such approval will only be given **for those works that are necessary to carry out the emergency measures** and are subject to a subsequent formal application covering the work undertaken plus any consequential work, which **must be submitted immediately** in the normal way.

Buildings no longer in use for worship

- 41 Guidance issued by the Pontifical Council for Culture in December 2018 on the closure and re-use of churches can be found [here](#). This guidance, and in particular the final recommendations, should be consulted whenever closure of a historic church is being considered.
- 42 The bishop may allow a church to cease to be used for worship, after consulting the council of priests, obtaining the consent of those who could lawfully claim rights over that church, and satisfying himself that the good of souls would not be harmed. (These requirements do not apply where the church cannot in any way be used for worship and there is no possibility of its being restored to that use.)
- 43 If the church is listed, or has been identified as a candidate for listing, the following additional procedures should be followed. Following consultation with the local congregation, the diocese should commission an architectural and historical report to inform the final decision on the future of the building. The list entry and Taking Stock report will be a useful starting point, but the

commissioned report will more detailed and wide-ranging than these, and should include:

- A description of the church and its furnishings
- An inventory of contents (vestments, plate etc.)
- An assessment of significance
- A brief description and assessment of significance of other churches in the ecclesiastical area (eg deanery)
- Recommendations.

- 44 The inventory may form an appendix to the main report. The HCC or Patrimony Committee will be able to provide names of individuals or organisations best able to provide the report.
- 45 Upon receipt of the report, the diocese should forward it to the HCC. The HCC will notify the Patrimony Committee and statutory consultees - local authority, Historic England/Cadw and the national amenity societies - of the proposed closure, using **Form 15** and enclosing a copy of the report. The diocese will also arrange for Form 15 to be displayed in a prominent position on the exterior of the church at or near its main entrance. Consultees will be given 28 days to comment. At the end of the consultation period, and having taken into account the views of consultees, the HCC will advise the bishop about the future of the church building, should closure be confirmed. Such a recommendation may be that it should be preserved intact by handing over to a trust or similar; that it should be retained for some secular but not unbecoming purpose; or (in exceptional circumstances) that the building may be demolished. Preferred uses are religious use (by another Catholic community or Christian denomination) and cultural or charitable uses. Commercial for-profit reuses are discouraged, although residential conversion of buildings of lesser architectural significance may be countenanced.
- 46 The HCC may also make recommendations on the disposal of objects from the church. Such disposals should be in accordance with Vatican guidance (see link above) and the principles set out in the *Memorandum on the disposal of objects from churches*

published by the Bishops' Conference as Appendix C of *Consecrated for Worship* (2006).

- 47 If at the end of this process and following the canonical consultation the bishop decides that the church shall cease to be used for worship, the HCC Secretary will inform the local planning authority and Historic England (or Cadw) that the building has been closed, and is no longer exempt from secular listed building controls.
- 48 For listed churches, oratories and chapels owned by religious orders or controlled by a non-territorial Ordinary, similar procedures to those set out above should be followed.

Glossary

Bishop

The diocesan bishop (see Ordinary)

The Conference

The Bishops' Conference of England and Wales

Historic England

Public body which advises government on, amongst other matters, listing and the operation of the ecclesiastical exemption (legal title the Historic Buildings and Monuments Commission for England). Contact details are given on the Catholic Historic Churches website.

Cadw

The Welsh Government Historic Environment Service. Contact details on Catholic Historic Churches website.

Decree

The General Decree on the Ecclesiastical Exemption made by the relevant Ordinary

National Amenity Societies

The Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Twentieth Century Society and Victorian Society. The Gardens Trust should also be consulted if the church lies within a registered historic park or garden. Contact details on Catholic Historic Churches website.

Ordinary

The person having jurisdiction over the relevant structure or the administrator of that structure; not just the territorial bishop but also, for example, the Bishopric of the Forces and the Ordinariate (see also Bishop), Abbot, Provincial etc.

Presbytery

Priest's place of residence

Patrimony Committee

The common abbreviation for the Subcommittee of the Patrimony Committee of the Bishops' Conference of England and Wales

Trustees

The body or persons in whom the legal title of the relevant structure is vested