

Directory
on the
Ecclesiastical Exemption
from
Listed Building Control

BISHOPS' CONFERENCE OF ENGLAND AND WALES
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Note

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Directory on the Ecclesiastical Exemption from Listed Building Control

Introduction

- 1 Under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 certain buildings in the ownership of the Roman Catholic Church are exempted from some of the provisions of planning legislation subject to approved alternative controls and procedures being exercised by Church authorities. 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. On its part, 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. It is the right and duty of the Ordinary to supervise the administration of temporal goods within his jurisdiction and the duty of Trustees to protect trust property vested in them. This Directory sets out the procedures to be followed by those wishing to carry out building and related work to those buildings.

- 2 To establish the required procedures, the Ordinaries of the Dioceses and Religious Orders listed in the Schedule have each issued a Decree which requires persons wishing to carry out relevant works to apply for a faculty granted under the scheme described in this Directory. 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 a faculty for any relevant works. This Directory supersedes all previous guidelines and will be subject to periodic review by the Department for Christian Life and Worship of the Conference. The Sub-Committee for Church Patrimony has been charged by the Conference with the oversight of the procedures and their implementation.

Definitions

- 3 An explanation of the terms used in this Directory is given in the Glossary (page XXX).

The Need for a Faculty

- 4 The Decree provides that no relevant works may be undertaken except with the authority of a faculty granted on behalf of the Ordinary in accordance with the procedures described in this Directory.
- 5 For the exact definition of relevant works, refer to the Glossary and the relevant Decree. The definition of relevant works extends to internal or external works (short of total demolition) carried out on:
- (a) any listed church, oratory or chapel owned by the diocese, a parish or any other ecclesiastical organisation which is subject to the diocesan Bishop and is being used primarily for worship; or
 - (b) any listed ecclesiastical building (except a presbytery) belonging to a religious institute or a society of apostolic life which is being used for ecclesiastical purposes.

This definition extends to objects or structures which are fixed to the exterior or are in the grounds of such buildings unless they have been listed in their own right.

- 6 The relevant works are subject to the procedures described in this Directory because they are exempt from secular listed building control. Works to listed buildings which do not fall within the scope of this Directory will usually require statutory listed building consent from the local planning authority.
- 7 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, and such consent must be sought in *addition* to a faculty under this Directory.

- 8 The ecclesiastical exemption does *not* apply to (and hence listed building consent will normally be required for):
 - (a) Catholic chapels in, attached to, or within the boundaries of private houses (unless in the ownership of a diocese, parish, religious institute, society of apostolic life or of another ecclesiastical organisation subject to the jurisdiction of the diocesan Bishop);
 - (b) cases of total demolition
 - (c) works not undertaken by or on behalf of the owner of the building;
 - (d) works to individually listed buildings within the boundaries of an exempt building;
- 9 Like for like works of repair and maintenance do not generally require consent.
- 10 Advice may be sought from the Secretary to the Historic Churches Committee on the need for a faculty and/or local authority consents. In cases of doubt administrators of buildings should consult the Historic Churches Committee and, if appropriate, the local authority.

Listed Buildings

- 11 A listed building is one of special architectural and historic interest which has been identified as such and included in a list published by the Secretary of State for Culture Media and Sport (formerly National Heritage) or the Secretary of State for 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 1830 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. Major churches of all periods and known authorship are likely to be listed.

The Historic Churches Committee

- 12 Each diocese has an Historic Churches Committee, established by the bishop with its own Statutes. A Committee 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 Historic Churches Committee 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.

- 13 The membership of the Committee is defined in the Statutes in accordance with several principles which ensure that the Committee is able to come to an independent view on matters before it. It will have a balance of members drawn from the various groups who have a legitimate interest in the Committee's 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 should therefore be 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.

- 14 The Committee will have a Secretary, appointed by the Bishop after consultation with the Chairman. The Secretary will not be a member of the Committee. The role of the Secretary is to be the executive arm of the Committee. The Secretary needs to be a person who is capable of carrying out the functions of being clerk to the Committee and to be the point of contact for all persons having business with the Committee. The Secretary needs to be sufficiently well versed in the planning system and the procedures described in this Directory to be able to provide the Committee and any persons having dealings with the Committee with an independent and reliable source of advice on proper procedures. The Secretary shall act as the person through whom any discretion to be exercised by the Chairman under the procedures is communicated.

- 15 A copy of the Statutes for every Historic Churches Committee will be lodged in the Archive of every Diocese which that Committee covers and with the Liturgy Office; and will be given to every member of the Committee within twenty-one days of being made. The Statutes form part of those records accessible under paragraphs 39-42. New members will be given a copy of the current Statutes on appointment.

The Procedure for Applications

- 16 Before an application is made, certain preliminary actions may be necessary. If significant alterations to a diocesan building are involved applicants should obtain in advance the 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. In all cases informal consultation with the Historic Churches Committee (and the Trustees) in advance of the formal application is welcomed, and in complex cases may be beneficial.
- 17 Applications must be submitted to the Secretary to the Historic Churches Committee using **form I** by or on behalf of the person responsible for the administration of the building (“the applicant”).
- 18 For all but the most minor works photographs, professionally drawn plans and adequate specifications will be needed, sufficient to identify the building, illustrate its character, and explain the proposals. The application must be accompanied by four copies of these plans, photographs, drawings and specifications, including a 1:1250 or 1:2500 location plan with the position of the building, its curtilage and ownership boundaries clearly marked. (In the case of minor works, advice should be sought from the Secretary whether these requirements can be relaxed.)

- 19 A copy of the most recent quinquennial report should be included if not already in the possession of the Historic Churches Committee. This document will normally have been commissioned by the diocesan finance or property board.

Acknowledgement and Notification

- 20 The Secretary to the Historic Churches Committee will send **forms II and III**, to the applicant, who must display form II for a continuous period of not less than 28 days in a prominent position on the exterior of the building on or near its main entrance. (If the building is not the Parish Church, a copy of form II 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 in an appropriate local newspaper, using the wording on form III.
- 21 The Historic Churches Committee Secretary will consult the local planning authority, English Heritage or Cadw and the national amenity societies. This process will take 28 days and should be undertaken concurrently with the public notices detailed above.
- 22 If the proposal includes works of demolition the Secretary will also inform the Royal Commission on the Historical Monuments of England or the Royal Commission on the Ancient and Historical Monuments of Wales. In the case of total demolition the Historic Churches Committee may comment on the proposals, but is unable to receive an application (see paragraph 6) as listed building consent will be required.
- 23 The applicant, all those consulted in accordance with this procedure and any person who submits written representations to the Secretary to the Historic Churches Committee in any particular application are referred to hereafter as “interested parties” with respect to that application.

The Procedure for Determination

- 24 The Secretary to the Historic Churches Committee 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 Historic Churches Committee for discussion and determination.
- 25 Subject to anything specifically contained in this Directory or the Statutes of the Historic Churches Committee, the procedure adopted for determination of any application is to be determined by the Historic Churches Committee.
- 26 The applicant and/or up to two representatives are entitled to attend when the relevant application is being discussed and determined by the Historic Churches Committee. They may present their proposals to the Historic Churches Committee and answer questions but may not participate in the discussion by the Historic Churches Committee unless requested to do so.
- 27 The Committee may request the bishop to appoint a suitable adviser to advise it on applications requiring specialist expertise (for example those affecting organs, stained glass or archaeological remains). The Committee will normally make such a request when such specialist advice cannot be obtained from among its existing members. The Committee will normally consult any adviser who has been appointed for that purpose. An adviser will continue to be available to the Committee on future occasions for the duration of his or her appointment.
- 28 In determining the application, the Historic Churches Committee may decide to refuse or approve the application (whether fully or partially). If it approves the application or any part of it, it may grant a faculty either in the form applied for or as modified by the Historic Churches Committee in any way. The Historic Churches Committee may also make the faculty subject to any conditions it thinks fit. A faculty will normally be subject to a time limit of three years. In cases involving substantial works, the conditions will normally re-

quire the counter signature of the applicant’s architect, surveyor or other professional adviser in addition to that of the applicant on the completion form(s) (form VII).

- 29 All interested parties will be advised of the decision by the Secretary to the Historic Churches Committee, using **form IV**. In order to allow time for interested parties to lodge an appeal against the Historic Churches Committee decision, the faculty will not be issued and no work may therefore commence for at least **28 days** after the date of the decision notice. After 28 days, the Secretary will issue the faculty using **form V**, at which point the applicant may proceed in accordance with that document.

The Procedure for Appeals

- 30 Any interested party may appeal to the bishop against the decision of the Historic Churches Committee. The bishop will not normally hear the appeal himself, but will normally establish a commission to hear the appeal on his behalf. Such a commission will consist of three persons, one each drawn from the following categories:
- (a) persons canonically qualified to preside at such appeals,
 - (b) professionals with experience of listed buildings, and
 - (c) persons involved pastorally with the care of church buildings.

The Sub-Committee for Church Patrimony is willing to advise bishops on suitable candidates for commissions.

Submission and Acknowledgement

- 31 An appeal must be lodged with the Secretary to the Historic Churches Committee, using **form VIII**, within 28 days of the date of the decision notice. The appeal must be accompanied by three stamped addressed envelopes for subsequent communications (unless the appeal is from the applicant). Copies of form VIII are available on request from the Secretary to the Historic Churches Committee.

- 32 The Secretary to the Historic Churches Committee will acknowledge receipt of the appeal by sending **form IX** to the appellant. Copies of all forms VIII received and forms IX sent out will be sent to all other interested parties.

Appeal Hearing

- 33 Following a **further 28 day period** the bishop will normally establish a commission to consider the appeal.
- 34 Once a commission has been established, it will conduct the appeal in accordance with the procedure determined by the president of the commission. The procedure will usually follow canonical norms. The Secretary to the Historic Churches Committee will act as Secretary to the commission.
- 35 The appellant and any interested party may avail themselves of the services of an advocate or procurator. The commission may allow them to be represented in any other way.
- 36 The decision, which will be final, is to be notified to all interested parties by the Secretary to the Historic Churches Committee, using **form X**. If necessary, the Secretary will also issue the appropriate faculty, using form V.

Unauthorised works

- 37 Where relevant works are commenced without the authority of a faculty or in breach of any conditions attached to a faculty, the Ordinary, acting also on behalf of the Trustees, should order work to cease, by the service of **form XI** on the person who is responsible for the administration of the building. That person must follow the directions contained in the order and any subsequent directions of the Historic Churches Committee.

- 38 The position must then be regularised by following the procedures described in this Directory. The building must either be restored to its original condition or an application submitted to the Historic Churches Committee in the normal way. Such an application will not necessarily be approved, and if it is refused in whole or in part, the necessary remedial works to restore the building to its original condition must be undertaken without delay. In all these matters the directions of the Historic Churches Committee must be followed.

Monitoring and Records

- 39 Within fourteen days of commencement of the relevant works the applicant must submit **form VI** to the Secretary to the Historic Churches Committee. On completion of the relevant works, applicants must submit **form VII** to the Secretary to the Historic Churches Committee. Form VII must be signed by the applicant, and, where required by the Historic Churches Committee, 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 VI and VII are to be submitted.)
- 40 The Secretary to the Historic Churches Committee shall keep a record of all proceedings of the Historic Churches 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 Historic Churches Committee) in a form accessible to those with a right to see them.
- 41 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 Sub-committee for Church Patrimony have a right to see all records of the Historic

Churches Committee. Members of the public may apply to the Secretary for access to the records, which will normally be arranged at a convenient time. The Historic Churches Committee should only refuse access to members of the public if they have good reason for doing so.

- 42 An annual summary report is to be produced and a copy sent to the Liturgy Office. Copies need only to be sent to the DCMS or Cadw, the Joint Committee of the National Amenity Societies and English Heritage if requested. The format of the report should follow that recommended by the Sub-committee for Church Patrimony. The annual report is to cover the calendar year and is to be submitted by the following 1st March.

Emergency Procedures

- 43 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 Historic Churches Committee) a provisional faculty may be granted (using **form XII**) 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 XII). 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 or other Ecclesiastical Purposes

- 44 The Directory does not apply to churches, oratories or chapels no longer used for worship or ecclesiastical buildings closed for all purposes, as the ecclesiastical exemption will cease to apply. If demo-

lition is proposed it should be noted that total demolition is not normally exempt as the building is held to be no longer in use for ecclesiastical purposes.

- 45 The bishop may allow a church to cease to be used for divine 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 divine worship and there is no possibility of its being restored.)
- 46 Where the church is a listed building, the following additional procedures should be followed. The diocese should, following consultation with the local congregation, commission an expert report describing in detail the architectural and historic interest of the building and its contents. This report will form the basis of the consultation with the Historic Churches Committee. If, following this consultation the diocese decides to proceed, the canonical consultation described above should be undertaken.
- 47 If, after the canonical consultation the bishop decides that the church shall cease to be used for divine worship, the Historic Churches Committee should be notified. This notification will allow it to inform the local planning authority and English Heritage (or Cadw) that the building will no longer be covered by the ecclesiastical exemption, and to make recommendations to the bishop about the future use of the church. Such a recommendation may be that the church 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 that it may be demolished. Recommendations may also be made on the disposal of objects from the church. Such disposals should be in accordance with the principles set out in the *“Memorandum on the disposal of objects from churches”* published by the Bishops’ Conference as Appendix B of *“The Parish Church”* (1984).
- 48 Those responsible for oratories and private chapels which are listed buildings should follow similar procedures to those set out above.

Glossary

relevant structures

means:

- (a) any listed church, oratory or chapel owned by a diocese or a public juridical person subject to the jurisdiction of the diocesan bishop, including:
 - (i) any object or structure within that building;
 - (ii) any unlisted object or structure fixed to the exterior of that building; or
 - (iii) any unlisted object or structure within the curtilage of that building which, although not fixed to that building, forms part of the land;
- (b) any listed ecclesiastical building (except a presbytery) which is for the time being used for ecclesiastical purposes and which is owned by a religious institute or society of apostolic life (or province or house thereof) which has opted into the scheme described in this Directory;

relevant works

means:

- (a) 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
- (b) any works affecting the archæological importance of a relevant structure or archæological remains existing within it or its curtilage;

bishop

means the diocesan bishop;

the Conference

means the Bishops' Conference of England and Wales;

the Liturgy Office

means the Liturgy Office of the Conference;

English Heritage

means the Historic Buildings and Monuments Commission for England;

Cadw

means the Welsh Office agency known as Welsh Historic Monuments;

the Decree

means the General Decree on the Ecclesiastical Exemption made by the relevant Ordinary;

Ordinary

means the person having jurisdiction over the relevant structure or the administrator of that structure (cf. can.134);

Trustees

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

church, oratory or chapel

means an ecclesiastical building which is for the time being used for ecclesiastical purposes and whose primary use is as a place of worship;

listed building

has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990;

unlisted

means an object or structure which is not itself a listed building (apart from any status as a listed building which it may have solely by being treated as part of the church, oratory or chapel);

presbytery

means a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office;

national amenity societies

means the six national amenity societies which are members of the Joint Committee of the National Amenity Societies;

Historic Churches Committee

means the body set up to grant faculties on behalf an Ordinary in accordance with the Decree;