



department for
**culture, media
and sport**

The Ecclesiastical Exemption

Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 2010 - A consultation

1 February 2010

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Background

1.1 Under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (1994 No 1771), certain church denominations are exempt from the need to obtain local authority consent to carry out works to church buildings that are listed as being of historic or architectural interest, or are situated in conservation areas.

1.2 The denominations in England that are exempt are the Church of England, the Roman Catholic Church, the Methodist Church, the United Reformed Church, and the Baptist Union of England. While no other denominations or faith groups are currently exempt, the Department for Culture, Media and Sport (DCMS) would be happy to discuss with any group what might be required in order for exemption to be granted.

1.3 The exemption remains in place because the systems of control established by the denominations are considered to provide a sufficiently robust alternative to local authority controls in providing protection for buildings of heritage significance. The exemption recognises also that church buildings may need to change in order to remain viable as living places of worship in the longer term interests of their sustainability as heritage buildings. The exemption also reduces burdens upon local authorities.

1.4 DCMS is proposing to repeal the 1994 Order and make a new Ecclesiastical Exemption order which we propose to lay in the coming months. Whereas the 1994 Order covered England and Wales, this consultation covers England only. The reasons for making a new order are:

- The need to resolve a longstanding issue whereby a range of buildings are currently not protected either by local authority or by denominational systems of control. More about this is on page 7-8;
- The opportunity to reduce instances of 'dual control', where works to a building need consents from both local authority and denominational bodies;
- The need to update some of the references to church buildings to reflect current denominational ownership and stewardship arrangements;

1.5 We have taken the opportunity to draft the Order in a way which we consider will be easier for people to understand and apply. In doing so, we hope that we have achieved the policy intention and have not inadvertently removed any substantive provisions, and we would welcome your views in this respect.

1.6 We are not seeking views on the substance of the Order as we believe that there has been sufficient opportunity to comment on these proposals. DCMS has previously consulted on the policy intention of the substantive changes proposed, at the White Paper and Draft Bill stages of the Heritage Protection Bill, which is currently awaiting a Parliamentary slot. The Local Government Association, (on behalf of local authorities), English Heritage, the Amenity Societies, the Association of Local Government Archaeological Officers, the

Institute of Field Archaeologists and the Institute of Historic Building Conservation were given a further opportunity in 2009 to comment on the effectiveness of the Exemption in protecting assets

1.7 We are, however, seeking views on the proposed new guidance to accompany the revised order: '*The Operation of the Ecclesiastical Exemption and related planning matters for places of worship*' which will replace the 1994 guidance document: '*The Ecclesiastical Exemption – What it is and How it Works*'.

Chapter 2: The Order

2.1 The Planning (Listed Buildings and Conservation Areas) Act 1990, under which the Order is made, sets the parameters of the buildings that can potentially be exempt from the provisions of listed building consent set out in the Act.. The Act restricts the exemption to ‘ecclesiastical buildings for the time being in use for ecclesiastical purposes’. It precludes buildings ‘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’ from being considered as an ecclesiastical building for the purposes of the order, although the definition of ‘building’ can include a part of a building¹.

2.2 The Order excludes all buildings from the exemption other than those specified in the Order. The policy intention is that the Ecclesiastical Exemption will apply to certain buildings or structures which are covered by denominational groups which have acceptable systems of control in place. Details of the control systems of each denomination can be found on denominational websites. While DCMS can lay out the policy intention behind the Order, it would be for a court to decide in the case of a dispute whether the exemption applies to any specific building.

2.3 The denominations covered by the Exemption in England are the Church of England, the Roman Catholic Church, the Methodist Church, the United Reformed Church, and the Baptist Union of England. There is no change to this list. However, changes have been made to schedule 1 to the Order to reflect changes to the names of the trust corporations within the Baptist Union.

2.4 It is intended that the exemption covers:

At church sites

- The church building itself;
- Any object or structure within a church building;
- Any object or structure fixed to the exterior of the church building;
- Any object or structure within the curtilage of a church building which although not fixed to that building forms part of the land
- The exemption applies to an object or structure referred to above, whether separately listed or listed only on account of its relationship with the listed church building, where it constitutes an ecclesiastical building for the time being in use for ecclesiastical purposes. There is no definition in the legislation of ‘ecclesiastical purposes’. Under this heading, the

¹ The definition of ‘building’ is that enshrined in the Town and Country Planning Act 1990, and modified for these purposes (‘“building” includes any structure or erection, and any part of a building, as so defined’),

exemption could potentially cover boundary walls, lychgates, table tombs, parish rooms, school rooms, halls, charnel houses, campaniles or other ancillary buildings. This list is not exhaustive. In the case of a dispute as to whether exemption applies, a final decision rests with the courts.

At cathedral sites

- All listed buildings, objects or structures enclosed within a red line drawn on a plan of the cathedral, where these constitute ecclesiastical buildings for the time being in use for ecclesiastical purposes. The 'red line' plan for each cathedral, dating from 1994, is deposited with the local planning authority, and can also be viewed at the Cathedral and Church Buildings Division of the Church of England, or at DCMS. There will be no alterations to red lines during this revision of the Order;
- Any church building outside the red line, but within the precinct (or 'green line'); including any object or structure within a church building; any object or structure fixed to the exterior of the church building; and any object or structure within the curtilage of a church building which although not fixed to that building forms part of the land
- Any monuments outside the red line, but within the precinct which are situated in a grave yard, church yard or other land which is used for the purposes of burial. The exemption is not an exemption from scheduled monument consent.

2.5 The extension of the exemption to cover separately listed curtilage structures of churches (including Cathedral precinct churches) is a change from the last version of the Order. Works to such structures are currently subject both to local authority and denominational controls. We consider that denominational systems of control are able to determine the appropriateness of works to such structures, in accordance with the consultation requirements in the Code of Practice which forms an annex to the revised guidance. Denominational control systems are already, for the most part, considering consent applications for works to such structures, in addition to the consents needed from local authorities. The extension of the exemption to such structures will represent, therefore, a reduced administrative burden for most exempt denominations and for local authorities, and should represent no reduction in the levels of protection afforded.

Protecting the unprotected

2.6 The other major change in the policy intent of the order concerns the 'peculiarities and special cases' covered in article 6 of the 1994 Order. This provision exempted from secular controls a range of buildings that were also not subject to denominational controls. It was the intention that, within 18 months of the 1994 Order being laid, a decision would be made in respect of each building as to whether it would be covered by denominational control, or default to local authority controls. However, no timetable was set within which such an election should be made. In the case of the Church of England, it was necessary to pass the Care of Places of Worship Measure 1999 to enable buildings that were not parish churches to be covered by the faculty jurisdiction.

2.7 It is important to note that we are not saying that there has been widespread detrimental work undertaken to such buildings. However, we are

aware that some works have been undertaken which would have required consents had either local authority or denominational controls applied.

2.8 The buildings exempted under article 6 were:

- Peculiars (Church of England Churches outside denominational control);
- The Royal Peculiars, including Westminster Abbey and St George's Chapel, Windsor;
- The churches in England of 3 Scottish denominations, 2 of which currently have no buildings in England;
- Chapels situated at public institutions such as schools, universities, colleges, prisons and hospitals;
- Churches subject to sharing agreements.

2.9 Specific consultation has taken place with the owners and managers of many buildings impacted by this change, including many schools and colleges with listed chapels, the Royal Household and the Historic Royal Palaces, the Government Historic Estates Unit, the NHS historic estates, Churches Together in England, the Scottish denominations and appropriate umbrella groups.

2.10 Under the revised order, the majority of the buildings currently exempt by virtue of article 6 will remain exempt only where they have opted for coverage by a denominational system of control. Where no such election is made, local authority controls will apply. The buildings that will retain exemption despite not coming under denominational control are:

- Westminster Abbey and St George's Chapel, Windsor. Each of these has a fabric advisory committee to advise on works, which meets the requirements of the Department's Code of Practice;
- Christ Church Cathedral, Oxford. The Cathedral, which is also a college chapel, is in a period of transition towards coverage by the Cathedrals Fabric Commission for England (CFCE). Such coverage is currently precluded by the Care of Cathedrals Measure, which will be amended in due course. In the interim, a Fabric Advisory Committee will be established and proposals for works will be submitted informally to CFCE for advice;
- Churches in England of the Church of Scotland. We are required to retain the exemption for these buildings by the provisions of the Church of Scotland Act 1921. Works to these churches are under the jurisdiction of the Church of Scotland's Mission and Discipleship Council's Committee on Church Art and Architecture

2.11 A further schedule (Schedule 3) has been added to the revised Order to specify a small number of colleges which are opting for their chapels to be covered by the control system of the United Reformed Church in order to retain the exemption.

Chapter 3: Guidance

3.1 While we justify the retention of the exemption on the grounds of the equivalence of protection afforded to buildings, it follows that, where changes are made to secular systems of protection, changes might also become necessary to denominational systems in order to maintain that equivalence. With the Heritage Protection Bill currently awaiting Parliamentary time, work has continued on a revised Planning Policy Statement (PPS) '*Planning for the Historic Environment*'. A draft PPS was published and its contents have undergone consultation. A final revised version has yet to be published.

3.2 The wording of the draft revised PPS has had an impact on some of the language used in the revised Ecclesiastical Exemption guidance. For example, the significance of an historic building is referred to in terms of its 'historic, archaeological, architectural or artistic interest', which is wider than the 'special architectural or historic interest' upon which decisions to list a building are based. We do not consider that the revised wording places any new burdens on the operation of denominational systems, but we do consider it important that the terminology used shows that the exemption is an integral part of the Government's wider planning policy.

3.3 With the changed approach of the revised PPS, we have included in the draft guidance some of the messages from the previous version of the PPS, including the need for justification of proposed works, and the potential value to communities of churches no longer needed for worship.

3.4 Representations were received following the inclusion in earlier drafts of guidance of an encouragement to denominations to fully utilise Historic Environment Records (HERs). The use of HERs by denominations is an area in which new activity might be required over time in order to maintain the equivalence of protection that underpins the exemption. The PPS advises that local authorities should require that those planning development of sites which include heritage assets should carry out desk-based or field evaluations as part of any application for consent. Desk-based evaluation might include consulting the HER. Applicants for consent to works should then refer to these evaluations when considering plans for development. Finally, copies of evaluation reports should be deposited in the relevant HER.

3.5 We do not consider it unreasonable or overly burdensome for denominations to utilise Historic Environment Records. Such records are in their infancy, and there is unlikely to be much of significance to proposed work to churches. As time goes on, however, HERs will become much more useful, as long as everyone deposits relevant information in relation to works. For church buildings, denominations will be assisting those in the future who will make further changes to buildings, including possibly at the stage at which the building changes use.

3.6 Representations have also previously been received about the requirement to publicise proposed works to buildings at the site and in a local

newspaper. It was suggested that the Department had exempted denominations from this requirement. While it is correct that the Newman Report² recommended that the Department review the requirement to advertise proposals in newspapers, the Department has not at any stage removed this requirement. The requirement remains in place in respect of changes to buildings covered by local authority controls, and the maintenance of equivalence of protection suggests that the requirement needs to remain in place under the exemption. The precise requirements have been amended in the Code of practice to reflect what is required for works to buildings under local authority control.

² A review of the Ecclesiastical Exemption from Listed Building Controls conducted for DCMS and the Welsh Office by John Newman, September 1997.

Chapter 4: Consultation Questions

- 4.1 Do you agree that the revised draft Order achieves the policy intent as outlined on pages 6-8, and that none of the other rationalisation of the Order has resulted in a substantive change in policy or provision.
- 4.2 Do you agree that the revised guidance and code of practice represent sound and practical guidance for the operation of denominational systems, given the need for such systems to reflect any changes to secular protection, in the interests of maintaining equivalence of protection?
- 4.3 We intend to bring the revised order into force later in the year. Do you have any specific thoughts as to how long will be needed to further publicise the changes effectively, and when, therefore, the revised order should be brought into force? The Department will need to justify the length of time between the laying of the order and its coming into force.
- 4.4 Given that the specific references to churches have been removed from the draft revised Planning Policy Statement, do you agree that these have been adequately covered in the revised Ecclesiastical Exemption guidance? If not, what more could we include in the guidance to assist denominations and local authorities in making decisions about changes to church buildings?
- 4.5 Are there any other comments you wish to make about the revised order or guidance, given that we have already consulted on the policy intent of the order on previous occasions?

Chapter 5: How to respond

5.1 Responses can be made by email to;

Jeremy.dann@culture.gsi.gov.uk

or in writing to:

Jeremy Dann
Senior Policy Advisor
Culture Team
DCMS
2-4 Cockspur Street
London SW1Y 5DH

5.2 Responses should be made by **15 March 2010**. Please note our comments on page 13 regarding the duration of this consultation.

Chapter 6: Code of Practice on Consultation

We are asked to reproduce in our consultation document the Government's Code of Practice on consultation, which is shown below.

With regard to criterion 2, it should be noted that this consultation will last for only 6 weeks, because the substantive policy changes described have already been subject to two full 12 week consultation exercises as described at paragraph 1.5. This consultation is seeking views only on whether that policy intent is achieved by the wording of the order, and on the text of accompanying guidance. All other criteria are met.

Criterion 1: When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.



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