



department for
**culture, media
and sport**



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

The Operation of the Ecclesiastical Exemption

Draft Guidance

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improving
the quality
of life for all

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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Introduction

1. Church buildings¹ make a significant contribution to the heritage and life of the nation, demonstrating the finest design and decoration of their generation while helping to root our sense of place. We recognise that, in order to survive and to continue to serve their local communities, registered churches might need slowly to adapt to meet changing preferences, and to meet the needs of today's worshippers and other users. The Government is committed to working closely with the exempt denominations to make sure that they are able to make the right decisions about changes to churches, accessing the best advice, and taking into account the legitimate views of the wider heritage world, without adding excessive new burdens.
2. The legal framework for protecting the historic environment is set out in the Heritage Protection Act 2000... The Act provides for heritage structures of special historic, archaeological, architectural or artistic interest to be registered and managed through a formal consent system, administered by local planning authorities.
3. Many registered heritage structures are in use as places of worship, and the Heritage Protection Act ('the Act') makes separate provision for their protection and management needs through the 'Ecclesiastical Exemption'. The Ecclesiastical Exemption provides a mechanism for certain denominations to be exempted from the Heritage Asset Consent system when undertaking works or making repairs to those registered heritage structures under their control. Full details are set out in the Act and in the Ecclesiastical Exemption Order.
4. The Ecclesiastical Exemption therefore reduces burdens on the planning system while maintaining protection and reflecting the particular need of ecclesiastical registered heritage structures in use as places of worship to be able slowly to adapt to changing needs over time to ensure their survival in their intended use. It is widely acknowledged that keeping a building in use is more likely to result in the proper maintenance of that building and its sustainability.

¹ The term 'church buildings' is used generically and includes chapels

5. This guidance summarises the operation of the Ecclesiastical Exemption. It should be referred to by those denominations who are already exempt, faith groups who may be seeking exemption, local planning authorities, heritage protection professionals, and members of the public. It should be read alongside the Heritage Protection Act, the Ecclesiastical Exemption Order, and the Code of Practice for Places of Worship. English Heritage and the Welsh Assembly Government (Cadw)² may, from time to time, also publish separate guidance on works to registered heritage structures which is commended to all involved in works to churches.

² The responsibility for the historic environment in Wales lies with the Welsh Assembly Government - in legal terms it is vested in the legal entity 'The Welsh Ministers'. In practice, and on the authority of the Welsh Ministers, these responsibilities are carried out by Cadw, the historic environment division of the Welsh Assembly Government.

Who is exempt?

6. The Ecclesiastical Exemption Order limits the exemption to particular types of ecclesiastical registered heritage structures within the care of certain specified denominations which operate acceptable internal procedures for dealing with proposed works to registered heritage structures. In order to be included in the Order, exempt denominations' internal procedures must provide equally stringent procedures for the authorisation of works as the secular heritage protection system does. Equivalence of protection is a key principle underpinning the exemption and will be kept under review by the Department for Culture, Media and Sport and, in Wales, the Welsh Assembly Government (Cadw), in order to ensure that those denominations who benefit from the exemption maintain the required standards of protection.
7. In order for a denomination to become 'exempt', it must show that its systems and procedures provide equally stringent levels of control to the secular heritage protection system. In particular, its processes need to be open and transparent and should provide similar levels of consultation and engagement with local communities, planning authorities and with the national amenity societies as operate under the provisions of the rest of the Heritage Protection Act. It must also comply with the provisions of the Code of Practice for Places of Worship.
8. Currently the Order provides that the Ecclesiastical Exemption applies to registered heritage structures belonging to the following denominations only: the Church of England; the Church in Wales; the Roman Catholic Church; the Methodist Church; the Baptist Union of Great Britain and the Baptist Union of Wales; and the United Reformed Church.
9. All of these denominations have documented procedures for managing registered heritage structures that have been judged to be equally stringent to the secular consent regime. Copies of the documentation are available from each denomination.
10. No other faiths and denominations currently hold the exemption. For all other denominations and faiths, applications for work to their registered heritage structures require Heritage Asset Consent from the local planning authority in exactly the same way as similar works to secular registered heritage structures.

Applying for coverage by the Exemption

11. Those denominations and faith groups who think they should qualify for the exemption are free to apply. They will need to demonstrate that they have established sufficiently robust and transparent heritage protection procedures and are strongly advised to contact the Department for Culture, Media and Sport and, in Wales, the Welsh Assembly Government (Cadw), at an early stage in order to ensure that such internal systems will meet the necessary requirements.

What is exempt?

12. The Act provides an exemption for ecclesiastical registered heritage structures that are being used for ecclesiastical purposes, except those which are used mainly as a minister's residence. The Order restricts the operation of the exemption in terms of the types of structures covered – only registered structures whose primary use is as a place of worship or whose function is ancillary to a structure whose primary use is as a place of worship benefit from the exemption. The exemption applies to the full extent of those structures, as defined by their register entry and the relevant provisions of the Act. In the case of Cathedrals, the exemption will apply to those structures whose primary purpose is as a place of worship or whose function is ancillary to a structure whose primary use is as a place of worship, falling within the Cathedral's precinct.

13. Whether an ecclesiastical building designated as a registered heritage structure will benefit from the exemption will depend on its function. Many registered heritage structures within churchyards, such as lychgates, memorials, churchyard walls, charnel houses and parish rooms, will be ancillary in function to the church and therefore qualify for the exemption. However, the exemption of any individual ancillary structure will depend on the specific circumstances, and denominations should consider each case on its merits, and when in doubt, seek the advice of the relevant local planning authority in Wales and both the authority and English Heritage in England.

14. Furthermore, the exemption only applies to ecclesiastical registered heritage structures of the exempted denominations if works to those structures are covered by the internal control procedures of that denomination. Where works to such structures are not covered by the internal procedures of a denomination, they are not subject to the exemption and works require Heritage Asset Consent in exactly the same way as similar works to secular registered heritage structures.³ Where the structure, is covered by the internal procedure of an exempt denomination other than the Church of England's Faculty or Care of Cathedrals procedures, works to it will only be exempt when they are carried out on behalf of the denomination or, where the structure forms part of a university, college, school, hospital or public or charitable institution, where the works are carried out on behalf of the governing body or the trustees of that institution.

³ A further category provided for in the Order is registered heritage structures (in England and Wales) of the Church of Scotland under the terms of the Church of Scotland act 1921.

15. Under the Church of England Care of Places of Worship Measure 1999, it may be possible for certain ecclesiastical registered heritage structures to be opted into the Church of England's faculty jurisdiction voluntarily and thereby retain the Ecclesiastical Exemption. Such structures are:
- (a) a registered heritage structure which is subject to any peculiar jurisdiction and which is used for worship according to the rites and ceremonies of the Church of England;
 - (b) a registered heritage structure which is a chapel or other place of worship owned or leased by or held in trust for a religious community;
 - (c) a registered heritage structure which is part of a university, college, school, hospital, Inn of Court, almshouse or other public or charitable institution and of which the primary use is for worship according to the rites and ceremonies of the Church of England or for joint worship by members of the Church of England and other Churches;
 - (d) a registered heritage structure which is subject to a sharing agreement made on behalf of the Church of England in pursuance of the Sharing of Church Buildings Act 1969 [1969 c. 38.] and which is used for worship.
16. Registered heritage structures belonging to Roman Catholic religious orders in England and Wales also fall within the scope of the exemption and are subject to the relevant Diocesan (or multi-Diocesan) Historic Churches Committee unless that order has specifically informed the Patrimony Committee of the Bishops' Conference of England and Wales that it accepts that secular control procedures administered by the local planning authority in whose area the registered heritage structure is located apply. For the avoidance of doubt, in the event of a religious order not being prepared to accept the jurisdiction of the a Diocesan Historic Churches Committee over its registered heritage structure it will, de facto, be subject to the secular procedures.

How does it work?

17. Under the Heritage Protection Act, buildings and sites may be registered as heritage structures of special historic, archaeological, architectural or artistic interest. Registration details may be accessed online at the Heritage Gateway (www.heritagegateway.org.uk) for England or for Wales at the Welsh Assembly Government (Cadw) website (details to be confirmed). To qualify for the Ecclesiastical Exemption, the structure in question must be included in the Heritage Register for England or Wales.
18. Conservation Areas are normally designated or extended by local planning authorities. In England, they may also be designated by English Heritage and in Wales, by the Welsh Ministers. Details of Conservation Areas for any particular local authority area may be inspected at the offices of the local authority concerned. Unregistered ecclesiastical structures in Conservation Areas do not fall within the Ecclesiastical Exemption. Prior to the Heritage Protection Act 2002, exempt denominations were not required to seek Conservation Area Consent for demolition of unregistered heritage structures in Conservation Areas. The Act introduced the merger of Conservation Area Consent with Planning Permission, and henceforth works to demolish an unregistered heritage structure in a Conservation Area will always require planning permission.
19. Furthermore, there is no exemption from the need to obtain planning permission for development which affects either the exterior of a registered place of worship or is within a registered churchyard. Planning authorities in England and Wales, the Secretary of State in England and Welsh Ministers are required to have special regard to the desirability of preserving the structure or its setting or any features of special historic, archaeological, architectural or artistic interest which it possesses when considering whether to grant planning permission for any development which affects a registered structure or its setting. This duty applies even where that registered heritage structure is subject to the Ecclesiastical Exemption. In other words, the Ecclesiastical Exemption does not confer exemption from the planning acts.
20. Under the Act, the local planning authority's consent is normally needed for the following works ('relevant works') to buildings not covered by the Ecclesiastical Exemption :
- (a) any works resulting in the demolition or destruction of a registered heritage structure;
 - (b) any works resulting in any damage to or disturbance of a registered heritage structure where the damage or disturbance affects the special interest of the registered heritage structure;

(c) any works that –

- (i) are for the purpose of removing or repairing a registered heritage structure or any part of it or making any alterations or additions to it; and
- (ii) affect the special interest of the registered heritage structure;

(d) any flooding or tipping operations on or in a registered heritage structure.

21. In considering whether to grant HAC for works to secular structures under the Act, local planning authorities in England and Wales, the Secretary of State in England and Welsh Ministers must have special regard to the desirability of preserving the registered heritage structure or its setting or any features of special historic, archaeological, architectural or artistic interest which it possesses..
22. Further information about making applications for Heritage Asset Consent can be found in the DCMS/EH Guidance Note on Heritage Asset Consent [yet to be published]. .[Wales guidance to be confirmed]
23. Generally the Ecclesiastical Exemption applies to all types of works which would otherwise have required Heritage Asset Consent, as set out above. However, this principle does not apply to total demolition of an asset as, where total demolition is taking place, it has been held that the asset cannot be considered as being in ecclesiastical use.
24. Further, for redundant assets which are within the internal controls of the Church of England, total demolition in pursuance of a pastoral or redundancy scheme within the meaning of the Pastoral Measure 1983 will benefit from the exemption, although the Church of England has agreed to invite the Secretary of State to hold a non-statutory public inquiry in the event of reasoned objections to such a demolition from the local planning authority, English Heritage or national amenity societies. In Wales, the option of such an inquiry would need to be extended to Welsh Ministers.

Denominational consent procedures

25. The requirements for internal denomination consent procedures are set out in the Code of Practice. The essential requirement of such procedures is equivalence with secular heritage asset consent in terms of due process, rigour, consultation, openness, transparency and accountability. To remain within the Exemption, denominations will have to demonstrate that they are complying with the Code of Practice.

Essential Practice for Conservation and Archaeology

26. In addition to complying with the requirements of the Code of Practice, the following general principles should also be applied when carrying out work to ecclesiastical heritage assets. Proposals for works should:

- be based on a full understanding of the historic, archaeological, architectural or artistic interest of the asset;
- be founded on a clearly stated, demonstrable and sustainable, medium to long term need;
- respect the special historic, archaeological, architectural or artistic interest of the asset, its contents and setting;
- minimise intervention in significant historic fabric; and
- achieve high standards of design, craftsmanship and materials.

27. In all cases decisions about proposals and works should be based on a balanced judgment between the need for the works proposed and the significance of the structure or feature which would be altered or lost. Registered structures are a finite resource and strictly irreplaceable. Their special interest can be damaged just as much by unsympathetic alteration as by works of demolition. Government policy, set out, in England, in *Planning Policy Guidance 15: Planning and the Historic Environment, Environment* and, in Wales, *Circular 61/96 - Planning and the Historic Environment : Historic Buildings and Conservation Areas*, lays out that designation creates a presumption in favour of the preservation of the registered asset and emphasises the need to protect them from unnecessary demolition or unsuitable and insensitive alteration but does not in itself rule out the possibility of change. Indeed, in many cases it is only through continued use, which may necessitate gradual managed change, that the long-term conservation of assets can be best assured. What it does ensure, however, is that when change is contemplated, those responsible for making decisions have special regard to the desirability of preserving the asset, its setting and any special features that it may possess.

28. Planning policy, as explained, in England, in *Planning Policy Guidance 16: Archaeology and Planning*, and in Wales, *Circular 60/96 - Planning and the Historic Environment: Archaeology*, establishes a presumption against the disturbance of important archaeological remains and recommends that when works take place

which bring about such disturbance, then those responsible for the works must make arrangements for any mitigation and recording required by the controlling authority.

29. In considering proposals for works which would affect archaeology, denominations must therefore take into account any effects on the archaeological importance of the asset or archaeological remains existing within, or likely to exist within it or its surrounding land. It is important that denominations assess the archaeological implications of development proposals before applications are determined, and that appropriate arrangements are made for recording remains that would be lost in the course of works for which permission is being sought. It is also important that when works are being carried out to the fabric of ecclesiastical registered heritage structures which might reveal features of archaeological interest or shed light on the history and development of the building, appropriate provision is made for archaeological recording of that part of the building. Further advice on archaeological aspects is given in guidance [yet to be published].

Pre-application discussion

30. One of the best ways of managing the development of a site to ensure that heritage protection issues are properly addressed without unduly hindering development is through pre-application discussions. Exempt denominations should therefore consider building into their processes consultation of external stakeholders at as early a point as is reasonably possible. This should provide congregations and church authorities with greater certainty in their plans for development.

Heritage Partnership Agreements

31. The Act allows owners, planning authorities, English Heritage and Welsh Ministers to establish Heritage Partnership Agreements (HPAs) to manage complex sites or groups of sites. These voluntary management agreements will facilitate partnerships and dialogue between stakeholders and can help owners and managers to clarify their plans for the longer-term management of sites while reducing the need for consent applications and consultations for repeated works. Studies have shown that there is scope among the exempt denominations for such HPAs, both within denominations and externally, and that they may allow greater flexibility for individual congregations, subject, of course, to the need for agreement and review. Separate guidance [yet to be published] on HPAs is published in England by English Heritage and is available at [website address], and in Wales by the Welsh Assembly Government (Cadw) (website to be confirmed).

Historic Environment Records

32. Historic Environment Records are a computer-based information service which provides access to resources relating to the historic environment of a particular locality for public and professional benefit and use. They play a central role in informing the management of the wider historic environment, both within the planning system and in other management systems, including the systems operated by the exempt denominations. They are also an important public and educational resource. It is therefore essential that the exempt denominations build up links with Historic Environment Records. These are at various levels within local government, though in England they tend to be at the highest level available (for instance, at county or metropolitan borough level) and contact details for all HERs in England can be found on the Heritage Gateway (www.heritagegateway.org.uk). In Wales, such records are available from [to be confirmed]
33. The systems run by the denominations therefore need to take account of the need to seek information from the local HER as soon as possible after receiving an application for works or development. Local planning authorities will be required to do this when determining applications for Heritage Asset Consent. It is preferable that this consultation is undertaken by the applicants themselves at the pre-application stage in order to help shape their proposals; this will highlight previous investigations of the site, other structures (including non-designated structures) which may be affected by the works and any other considerations
34. Following works, copies of any reports produced by historical or archaeological investigations of the site should be deposited with the local HER, including investigations undertaken as a condition of any consents, both internal to the denominations or external. This will help to disseminate knowledge of the site and will inform anyone undertaking work on the site in the future.

Additional Guidance

35. Further guidance on works to churches and churchyards can be found in English Heritage's publication *New Works to Historic Places of Worship* and in *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England*, published by English Heritage and the Church of England. This guidance is commended to all and has relevance for Welsh places of worship too.
36. Further guidance on the management of the historic environment may be found in PPGs 15 & 16 in England and Circulars 60/96 and 61/96 in Wales or equivalent future guidance.

Annex A: Code of Practice

This guidance replaces that issued by the Department for Culture, Media and Sport in 1994.

A denomination's internal system of control over works to its registered historic assets should embody the following principles:

1. All proposals for internal and external works to a registered church, churchyard and/or churchyard structure, which would affect their character as registered heritage structures of special historic, archaeological, architectural or artistic interest should be submitted for approval to a body which is independent of the local congregation or community proposing the works in question.
2. The decision-making body, when considering proposals for works, should be under a specific duty to take into account, along with other factors, the desirability of preserving ecclesiastical registered heritage structures, and the importance of protecting features of special historic, archaeological, architectural or artistic interest.
3. The decision-making body should either include, or have arrangements for obtaining advice from, persons with professional conservation, archaeological and planning expertise in relation to the protection of ecclesiastical registered heritage structures and archaeological sites and the working of the secular planning system.
4. The decision-making process should make provision for:
 - (i) a system of pre-application consultation to ensure that the main issues in any application for consent for major works are understood and any problems identified prior to applications for consent being made.
 - (ii) the formal notification of proposals to the local planning authority, English Heritage/ the Welsh Assembly Government (Cadw) (as appropriate) and the national amenity societies after a complete application has been made to the denomination, together with supporting information, at as early a point in the consent process as possible; allowing them (except in cases of emergency) 28 days in which to comment on the proposed works. Any representations made by these bodies or any other person in relation to such proposals should be taken into account before the decision on works is made.⁴

⁴ Supporting information should include a plan to identify the building in question and such other plans and drawings as are necessary to describe the works proposed. For all but the simplest work, this will normally mean measured drawings of all floor plans and external or internal elevations affected by the work proposed. There should be two sets of drawings showing the structure before work and the altered structure or new

- (iii) a notice describing the proposed works and inviting comments from any interested persons, to be displayed for the same 28 days period outside the building in a prominent position visible to the general public, and a similar notice to be published in a local newspaper circulating in the locality;
 - (iv) taking into account any representations made (including any received following the notifications given at (ii) and (iii) above) and, along with other factors, the desirability of preserving ecclesiastical registered heritage structures and the importance of protecting features of architectural merit and historic interest (including fixtures and fittings);
 - (v) granting conditional consents, with a mechanism for checking the implementation of those consents and discharging the conditions;
 - (vi) [In Wales only] once the decision is made proposals for demolition concerning exempt ecclesiastical structures in Wales are required also to be notified to the Royal Commission on the Ancient and Historical Monuments of Wales, with access for recording purposes to be provided for them for at least one month before the commencement of works;
 - (vii) keeping a record of how a denomination's procedures were implemented in the case of each proposal, from whom representations were received, and what the decision was, with this record being available for public inspection during reasonable hours;
 - (viii) where consulted, and a response has been received, notifying the decision to English Heritage/the Welsh Assembly Government (Cadw) (as appropriate), the local authority and the national amenity societies, within a reasonable time-scale;
 - (ix) where appropriate, submitting information on the asset to the local Historic Environment Record (HER) to ensure that the HER represents as complete a record as possible of local heritage interest. Submissions should cover information on heritage assets with archaeological interest and all registered heritage assets, as appropriate, including information on all archaeological and historic investigations on such assets.
5. The denomination will publish the details of the procedures used to agree works in relation to the provisions of this Code of Practice including details of any works which can be undertaken without application for consent. To permit effective monitoring, the church body should make arrangements for recording in the case of each proposal for works how the procedures were implemented and the nature of the decision taken.

development to replace it after the proposed work. The inclusion of photographs is particularly helpful- of all elevations in demolition cases or of the part of the buildings affected (interior or exterior) in alteration or extension cases. A copy of the Register entry should also be supplied.

6. There should a clear and fair procedure for settling all disputes between the local congregation or community and the decision-making body as to whether proposals shall proceed.
7. The procedures of the church body should include arrangements for dealing with any breach of the control system, including provision for reinstatement of works to ecclesiastical registered heritage structures carried out without consent. Enforcement and penalty procedures will be published, with copies of the procedures provided to local planning authorities, English Heritage the Welsh Assembly Government (Cadw) and the national amenity societies.
8. In cases of emergency (i.e. in the interests of safety or health or the preservation of the structure) advance notification is expected wherever practicable as at 4 (ii) and (iii) above but on an appropriate shorter timescale.
9. It is desirable that denominations ensure, for the benefit of buildings and congregations, that arrangements exist to ensure the proper maintenance of registered ecclesiastical structures including provision for regular inspections;
10. It is desirable that exempt denominations have procedures providing for the redundancy of churches, making clear how and when the ecclesiastical registered heritage structures pass out of the exemption, including informing the local planning authority when a structure ceases to be used or available for worship, or ceases to be covered by a denomination's procedures.



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