

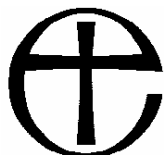
General Synod of the Church of England

THE CATHEDRALS FABRIC COMMISSION FOR ENGLAND

PROCEDURAL GUIDE 10

**THE CARE OF CATHEDRALS MEASURE
AND THE PUBLIC INTEREST:
The Role of Local Planning Authorities, English Heritage,
the National Amenity Societies and the Public**

**Issued by the Commission
March 2008**



Cathedrals Fabric Commission for England

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THE CARE OF CATHEDRALS MEASURE AND THE PUBLIC INTEREST:

The Role of Local Planning Authorities, English Heritage, the National Amenity Societies and the Public

1 Introduction

- 1.1 *The Care of Cathedrals Measure 1990* (“the 1990 Measure”), as now amended by *the Care of Cathedrals (Amendment) Measure 2005* (“the 2005 Measure”),¹ is an integral part of the overall system providing for the care for the nation’s heritage.² These Measures, like other Church of England legislation, were passed by the General Synod of the Church of England and approved by Parliament, and have equivalent status to Acts of Parliament. A general introduction to the Measure is provided in Procedural Guide 1 *The Care of Cathedrals Measure 1990 as amended by the Care of Cathedrals (Amendment) Measure 2005: A general introduction and context* (March 2008) issued by the Cathedrals Fabric Commission (“the Commission”).
- 1.2 The Government has recognised the effectiveness of the 1990 Measure in respect of Church of England cathedrals, and of the Faculty Jurisdiction in respect of Church of England parish churches (and certain other buildings), in the *Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994* (“the Ecclesiastical Exemption Order 1994”) and in subsequent reviews. The secular legislation has, therefore, continued to exempt these buildings from certain aspects of listed building control and scheduled monument control.³ This does not mean that the buildings are exempted from controls appropriate to their status as an important part of the national heritage: it means they are subject to a different group of controls.
- 1.3 Although the controls over Church of England cathedrals and parish churches are different from those applying to secular buildings, this does not mean that they can or should operate in isolation from other planning procedures or from the bodies responsible for implementing them. Indeed, it is a specific requirement under the ecclesiastical exemption arrangements that religious denominations should provide within their decision making processes for

¹ Except where stated otherwise, references in this document to “the 1990 Measure” are to that Measure as amended to 1st January 2008, including in particular the amendments made by the 2005 Measure.

² It applies to all Church of England cathedrals in England except Christ Church, Oxford.

³ *Ancient Monuments and Archaeological Areas Act 1979*, section 61 (8); *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 60; *Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994*; Planning Policy Guidance 15, *Planning and the Historic Environment* (1994), section 8.

consultation with the relevant Local Planning Authority (“LPA”), English Heritage and the National Amenity Societies, and for the public advertisement of proposals, allowing representations to be made.

- 1.4 The relationship between the Church and secular systems should be seen as a partnership. This accords with the spirit of the 1991 Cracow declaration of the Organisation for Security and Co-operation in Europe that: “Acknowledging the important contribution of religious faiths, institutions and organisations to the cultural heritage, the participating States will co-operate closely with them regarding the preservation of the cultural heritage.”⁴
- 1.5 The partnership aspect of the legislation is also emphasised in the duty placed on the Commission by the 1990 Measure to promote co-operation between the Commission itself and “organisations concerned with the care and study of buildings of architectural, archaeological, artistic or historic interest in England”.⁵

2 Legal Requirement for Approval under the Care of Cathedrals Measure 1990, as amended, and the Care of Cathedrals Rules 2006⁶

- 2.1 Under the Measure as now amended, a cathedral Chapter must seek and obtain approval before implementing, or consenting to the implementation of, any of the following:⁷
 - (i) any works, including works of repair or maintenance, on, above or below ground, on land in the freehold ownership of the cathedral’s corporate body, that would materially affect:
 - the architectural, archaeological, artistic or historic character of the cathedral church, or any other building within its designated Precinct⁸ that is for the time being used for “ecclesiastical purposes”. (This includes buildings in use for worship or a use ancillary to that of the cathedral church and covers those buildings that are exempted from listed building control); or
 - the immediate setting of the cathedral church; or
 - any archaeological remains within the designated Precinct

⁴ ICCROM Newsletter, 17, pp.4-7 and Document of the Cracow Symposium on the Cultural Heritage of the CSCE Participating States, paragraph 26. See www.osce.org/documetns/doclib/1991/06/23708_en.pdf.

⁵ See section 3 (2) (c) of the 1990 Measure.

⁶ *The Care of Cathedrals Rules 2006* (“*the 2006 Rules*”), made under the 1990 Measure, deal principally with procedural matters, and replace *the Care of Cathedrals Rules 1990* in their entirety.

⁷ The following wording is a paraphrase of section 2 (1) of the 1990 Measure.

⁸ The Precinct for the purposes of the 1990 Measure is formally designated by the Commission on a plan of the land surrounding the cathedral church in the freehold ownership of the corporate body; section 13 (3)-(6) of that Measure (introduced by the 2005 Measure) sets out the processes for designating or amending the Precinct and the criteria to be applied in doing so. Except where otherwise stated, references to the [designated] Precinct in this document are to the Precinct as formally designated under the 1990 Measure. See also the Commission’s Procedural Guidance Note 1 *Cathedral Precincts: their definition, designation and purpose under the Care of Cathedrals Measure 1990, as amended* (March 2008).

- (ii) the sale, loan or other disposal of any object in the ownership, possession or custody of the corporate body, or to the possession or custody of which it is entitled, that is of architectural, archaeological, artistic or historic interest.⁹ (These items will generally be included on the cathedral's Inventory.)
- (iii) the carrying out of any work to any such object that would affect its architectural, archaeological, artistic or historic character; or
- (iv) the permanent addition of any object that would materially affect the architectural, archaeological, artistic or historic character of the cathedral church.

2.2 Under the Measure, an application for such approval must be made to the Commission certain specified cases (see paragraph 4.2 below); otherwise it must be made to the Fabric Advisory Committee ("FAC") of the cathedral in question.

3 Material Considerations

3.1 The 1990 Measure requires any body exercising functions of care and conservation under it to have due regard to the purpose of a cathedral: that is, to the fact that the cathedral is the seat of the bishop and a centre of worship and mission. Without prejudice to this duty, the 1990 Measure also requires the Commission and FACs to have due regard to the desirability of preserving the fabric and features of interest¹⁰ of the cathedral, its immediate setting, any building of interest within its designated Precinct, any archaeological remains within the Precinct and any objects of the type referred to above. Decisions under the Measure should therefore achieve a balance between considerations of worship and mission and of care and conservation.¹¹

3.2 The Commission also recognises and endorses the presumption set out in Government planning guidance in favour of the physical preservation without disturbance of nationally important archaeological remains and their setting.¹²

4 Notification of Applications and the Right of Making Representations

4.1 The 1990 Measure and the 2006 Rules make specific provision for consultation with various bodies in connection with applications for approval.

⁹ This category and category (iii) below will include items found within the Precinct which would be "Treasure" under *the Treasure Act 1996* but for an Order under that Act excepting them. At the time of writing, the Government has not yet made this Order.

¹⁰ Except where otherwise stated, "interest" in this document means architectural, archaeological, artistic or historic interest.

¹¹ This provision echoes the principles set out in *Planning Policy Guidance Note 15*, section 8.3.

¹² *Planning Policy Guidance Note 16*, section 8.

Notification of Applications to the Cathedrals Fabric Commission

- 4.2 In respect of an application made to the Commission, by which a cathedral Chapter seeks approval of a proposal that would fall within paragraph 2.1 above involving works, including works of repair or maintenance, which would:¹³
- (i) permanently alter the fabric of the cathedral church or of any other building within the designated cathedral Precinct which is in use for “ecclesiastical purposes”¹⁴
 - (ii) involve the demolition of any part of the cathedral church or such other building; or
 - (iii) involve the disturbance or destruction of any archaeological remains within the designated Precinct
- the Cathedral Administrator must send written notification (in the prescribed form) to the LPA, English Heritage, and the Society for the Protection of Ancient Buildings (“SPAB”) on behalf of the National Amenity Societies, and provide them with full supporting information. Additionally he or she must display notices inside and outside the cathedral, where they are clearly visible to members of the public, and must make full supporting information available for inspection at specified times in a specified place.
- 4.3 Full supporting information will be proportionate to the scope and likely impact of the work but, in general, should address the following issues:
- the Chapter’s reasons for proposing the work and how it will relate to any broader issues
 - appropriate assessments of the impact the proposal might have on the architectural, archaeological, artistic or historic character of the cathedral, its contents or its setting or other buildings
 - descriptions, proposal documents, Briefs, and other specifications by the architect, archaeologist, artist or other responsible professional, clearly indicating the nature and detailed design of the proposed work
 - relevant plans, drawings and photographs.
- 4.4 Applications to the Commission for approval of the sale, loan or disposal of an object, or for work to an object that would materially affect its architectural, archaeological, artistic or historic character, where the object is designated on

¹³ Applications for these categories of work are reserved to the Commission for determination. See section 6 (1) (a) of the 1990 Measure.

¹⁴ These buildings are mostly indicated on an official plan issued for each cathedral by the Department of National Heritage (the predecessor of the Department of Culture, Media and Sport) and referred to in the *Ecclesiastical Exemption Order 1994*. But, within the designated Precinct, any other listed building that is used primarily as a place of worship is also exempted from listed building control (except that an object or structure fixed to the exterior of such a building, or forming part of land within its curtilage, is not exempted). Certain other monuments within the Precinct are also exempted. See also the Commission’s Procedural Guidance Note 1 on Cathedral Precincts (as referred to in footnote 8).

the cathedral's Inventory as of **outstanding** interest, must follow a similar notification procedure,¹⁵ except that it is not necessary to notify the LPA.¹⁶

- 4.5 However, if the object is a fixture or fitting, the LPA must be notified on the grounds that its removal would constitute a permanent alteration to the fabric.¹⁷
- 4.6 Following receipt of the relevant notices, the parties notified and members of the public have 28 days in which to submit any written representations to the Secretary of the Commission. These representations will be considered fully and fairly by the Commission before it determines the application. The Cathedral Administrator must also certify to the Commission¹⁸ that the necessary public notices have been displayed for the required consultation period and that notices have been sent to other parties as required above before the Commission can determine the application.
- 4.7 Following determination, the Commission will issue a statutory decision notice, which will be sent direct to the Chapter, English Heritage, SPAB (for the National Amenity Societies) and the LPA where appropriate (that is, if in the first place they received a notice of the application). The Cathedral Administrator is responsible for posting copies inside and outside the cathedral.

Notification of Applications to a Fabric Advisory Committee

- 4.8 In respect of an application to a cathedral's FAC (that is for a project that does not require approval from the Commission and has not been called-in by it for its own determination¹⁹), if the proposal is one that would involve the following types of works (including works of repair or maintenance):²⁰
 - (i) works that would materially affect the architectural, archaeological, artistic or historic character of the cathedral church or any other building within the designated Precinct which is in use for "ecclesiastical purposes" (that is, other than works that would involve any permanent alteration of the fabric, which require an application to the Commission – see above)
 - (ii) works that would materially affect the immediate setting of the cathedral church

¹⁵ The same will also apply to proposals for the sale, loan or other disposal of "Treasure" items of the kind referred to in footnote 9 above.

¹⁶ Further information is given in the Commission's Procedural Guide 2 *Proposals Requiring Approval and Making an Application* (March 2008) and Procedural Guide 8 *The Cathedrals Fabric Commission for England: its role and function & Determining an Application: procedures for the Cathedrals Fabric Commission* (March 2008).

¹⁷ See section 20 (2) of the 1990 Measure.

¹⁸ Via the Certificate of Publication in Form 9.

¹⁹ See section 6 (1) (b) of the 1990 Measure.

²⁰ See section 2 (1) (a) of the 1990 Measure.

- (iii) works that would materially affect any archaeological remains within the designated Precinct (that is, other than works that would disturb or destroy such remains, which require an application to the Commission – see above)

the Cathedral Administrator must send written notification (in the prescribed form) to the LPA, English Heritage and SPAB (on behalf of the National Amenity Societies). Additionally, the Cathedral Administrator must post notices inside and outside the cathedral where they will be readily visible to members of the public, and make full supporting information available for inspection at a specified time and in a specified place.

(Although the Measure does not oblige the cathedral to supply supporting information to the consultees with the notice of the application, it is helpful if it can be made to available to any consultee that requests it, to assist them in making an informed response to the notification.)

- 4.9 In respect of an application to the FAC for the sale, loan or disposal of an object of architectural, archaeological, artistic or historic interest, or the carrying out of works to such an object that would materially affect its architectural, archaeological, artistic or historic character (other than for an object designated as of **outstanding** interest, which requires an application to the Commission – see above), the Cathedral Administrator must display notices inside and outside the cathedral, and make full supporting information available for inspection.
- 4.10 Following receipt of the relevant notices, the parties notified and members of the public have 28 days in which to submit any written representations to the Secretary of the FAC. These representations will be considered fully and fairly by the FAC before it determines the application. The Cathedral Administrator must also certify to the FAC²¹ that the necessary public notices have been displayed for the required consultation period and that, where applicable, notices have been sent to other parties as required above before the Commission or FAC can determine the application.
- 4.11 Following determination, the FAC will issue a statutory decision notice, which the Cathedral Administrator will display inside and outside the cathedral where it is clearly visible to members of the public and send copies to the LPA, English Heritage and SPAB as appropriate (that is, if in the first place they received a notice of the application).

Note

Under the Measure, the Commission and FACs are always formally notified by the Cathedral Administrator when an application is made to the other and each always receives a copy of the other's decision notice.

²¹ Via the Certificate of Publication in Form 4.

Notification of Applications for Listed Building Consent or Scheduled Monument Consent

- 4.12 If the Chapter proposes to make any application for Listed Building Consent or Scheduled Monument Consent in respect of any building or monument within the designated Precinct, the Cathedral Administrator must send a notice in the prescribed form (Form 15) to the Commission. The Commission then has 28 days to submit representations to him or her.²²

5 Facilitating Representations on Applications

- 5.1 The purpose of the legal requirements for consultation is to ensure that statutory and other bodies and members of the public have the opportunity of making a meaningful contribution to the procedures under the Measure. This spirit should inform the operation of those procedures.
- 5.2 The time limit of 28 days is laid down for making written representations to the Commission or to an FAC following receipt or first display of a notice relating to an application. Those intending to submit representations should make every effort to meet this deadline and thereby avoid delays in the procedures.²³ However, there may be very good reasons why in some cases they cannot meet the deadline (for example, where a relevant committee may need to consider the proposals before the representations are made, but the committee is not able to meet within the specified time). In such cases the party wishing to make representations should write to the Commission or FAC Secretary, as appropriate, indicating that they wish to make representations but can only do so by some specified date beyond the deadline. The Commission or FAC will then consider whether to defer its determination of the application to allow for these representations to be made and considered. If there are no particular constraints relating to the timetable of the project, the Commission will normally allow such further extension, and it encourages FACs to do the same.
- 5.3 In all cases where the Commission or an FAC has asked for further supporting information, or has asked for details to be reconsidered, before determining an application, copies of the further information or revised details should be sent by the Cathedral Administrator to all those parties who received the notice and supporting information concerning the original application. The same will often also apply in cases where the Commission or an FAC has approved an application on condition that further documentation be submitted for final approval of details. When any such further information is sent out, although this is not covered by the formal 28 day notice period, nonetheless sufficient time should be allowed for those notified to consider the further information fully and to make any written representations.

²² See section 15 of the 1990 Measure.

²³ The Commission will usually publish its calendar of meetings (which, in general, are held monthly) and deadlines for submissions well in advance. FACs regulate their own procedure, including the timetable for their meetings.

- 5.4 The 2005 Measure introduced provisions for English Heritage and the National Amenity Societies to be notified of certain categories of applications made to an FAC. There will, in addition to this requirement, be occasions when it is good practice for a Chapter to ask for their informal comments or advice at a preliminary stage, before a formal application is made. This might, for instance, concern the important area of stonework repair and replacement, in which the SPAB has a particular and longstanding interest. Or it might concern proposals in relation to which one of the period-specific societies could contribute a particular expertise (see below paragraphs 6.10 to 6.12).

6 Developing Partnerships and Good Practice

These aspects have to be read in the context of the general duty placed on the Commission by the 1990 Measure to promote co-operation between itself and organisations concerned with the care and study of buildings of architectural, archaeological, artistic or historic interest in England (see paragraph 1.5 above).

Local Planning Authorities

- 6.1 The Commission and FACs look to LPAs to take an informed interest in proposals where the authority is a consultee in respect of an application under the Measure, and to exercise actively their right to make written representations. Such representations are a significant help to these bodies in reaching decisions that are informed by broader local planning considerations.
- 6.2 As noted above (paragraph 4.12), the Commission has a right under the Measure to make representations to a cathedral Chapter on any proposed application for Listed Building Consent. If the Commission makes such representations, and if the Chapter does in fact make the application, the Commission can reasonably expect that the Chapter will relay such representations to the LPA, and that the latter will give due consideration to them.
- 6.3 The Commission is also under a duty to give advice to a cathedral Chapter on the development of the landscape and environment in which the cathedral church is situated, as well as on the care, conservation, repair and development of buildings and archaeological remains within the designated Precinct.²⁴ Thus the Commission will comment, when invited to do so as an advisory body to the cathedral Chapter, on planning applications that materially affect either the setting of the cathedral church or its archaeological context, whether the site to which the planning proposal refers is within or outside the designated cathedral Precinct. The Commission also welcomes requests from LPAs for its views, as the expert national body with a remit for cathedrals, on planning applications affecting the setting of the cathedral or its archaeological context. The Commission will generally be willing to appoint a delegation to inspect and discuss such proposals on site.

²⁴ See section 3 (2) of the 1990 Measure.

- 6.4 Cathedral Chapters are encouraged to ensure that their Cathedral Archaeologist maintains appropriate liaison with the relevant local authority archaeology and historic buildings officers (at District and County level) over archaeological matters within the designated cathedral Precinct.
- 6.5 Generally the Commission encourages LPAs to be aware of their role within the 1990 Measure procedures, and to make due provision for recognising this in their Development Plans, and for involving themselves through their professional officers.

English Heritage

- 6.6 English Heritage is closely involved with cathedrals, not only through commenting on applications, but also through its programme of repair grants. This involvement, together with its extensive experience of historic buildings and monuments of all types, gives English Heritage a detailed technical knowledge that can be of great benefit to cathedrals.
- 6.7 The Commission not only receives helpful representations from English Heritage on specific applications, but has also co-operated with the organisation in a range of strategic projects of general relevance to promoting the care and conservation of cathedrals. These have included record keeping, fire safety, disabled access, and conservation plans.
- 6.8 Through the repair grant scheme, collaborative partnerships have been built up between certain individual cathedrals and English Heritage regional offices. But advice from the relevant English Heritage regional team may also be relevant in relation to other matters, especially where, for example, a project within the designated cathedral Precinct requires Planning Permission (or other planning consent), Listed Building Consent or Scheduled Monument Consent. All such requests for advice should be addressed in the first instance to the relevant English Heritage regional team.
- 6.9 The Commission particularly encourages English Heritage to consult with it over Scheduled Monument Consent cases within the designated Precinct of any cathedral, so that as far as possible the two bodies may co-ordinate their respective requirements in relation to archaeological matters.

The National Amenity Societies

- 6.10 The National Amenity Societies that are accorded a specific locus under the 1990 Measure are: the Society for the Protection of Ancient Buildings (SPAB), the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Victorian Society and, more recently, the Twentieth Century Society. SPAB acts as a clearing house for receiving notices relating to applications to the Commission and FACs.

- 6.11 In 1999 these societies jointly issued a booklet, *The National Amenity Societies: their Role in the Conservation of Anglican Churches*. This touched briefly on matters relating to cathedrals.
- 6.12 Cathedral Chapters and FACs are encouraged to remember that the National Amenity Societies are able to provide well-researched and expert advice on their respective areas and periods of interest, and they should not be thought of simply as “preservationist” pressure groups.
- 6.13 It may also be appropriate for a Chapter to consult with local amenity groups or other bodies where these may be seen as representative of local public interest in proposals.

Early Consultation

- 6.14 In all cases where the LPA, English Heritage or the National Amenity Societies are being requested to advise or comment on proposals, particularly at a preliminary stage prior to a formal application, it should be remembered that early consultation is the most effective way to obtain a meaningful input.

Cathedrals Fabric Commission
March 2008

USEFUL ADDRESSES (as at March 2008)

<p>English Heritage (Head Office) 1 Waterhouse Square 138-142 Holborn London EC1N 2ST</p> <p>Tel 020 7973 3000</p>	<p>English Heritage – East of England Region 24 Brooklands Avenue Cambridge CB2 2BU</p> <p>Tel 01223 582700</p>
<p>English Heritage – North East Region Bessie Surtees House 41-44 Sandhill Newcastle upon Tyne NE1 3JF</p> <p>Tel 0191 269 1200</p>	<p>English Heritage – South West Region 29 Queen Square Bristol BS1 4ND</p> <p>Tel 0117 975 0700</p>
<p>English Heritage – North West Region Suites 3.3 – 3.4 Canada House 3 Chepstow Street Manchester M1 5FW</p> <p>Tel 0161 242 1400</p>	<p>English Heritage – South East Region Eastgate Court 195-205 High Street Guildford Surrey GU1 3EH</p> <p>Tel 01483 252000</p>
<p>English Heritage – Yorkshire Region 37 Tanner Row York YO1 6WP</p> <p>Tel 01904 601901</p>	<p>English Heritage – London Region 1 Waterhouse Square 138-142 Holborn London EC1N 2ST</p> <p>Tel 020 7973 3000</p>
<p>English Heritage – West Midlands Region 112 Colmore Row Birmingham B3 3AG</p> <p>Tel 0121 625 6820</p>	<p>Society for the Protection of Ancient Buildings 37 Spital Square London E1 6DY</p> <p>Tel 020 7377 1644</p>
<p>English Heritage – East Midlands Region 44 Derngate Northampton NN1 1UH</p> <p>Tel 01604 735400</p>	<p>The Council for British Archaeology St Mary’s House 66 Bootham York YO30 7BZ</p> <p>Tel 01904 671417</p>

The Ancient Monuments Society St Ann's Vestry Hall 2 Church Entry London EC4V 5HB Tel 020 7236 3934	The Victorian Society 1 Priory Gardens Bedford Park London W4 1TT Tel 020 8747 5890
The Georgian Group 6 Fitzroy Square London W1P 6DX Tel 020 7529 8920	The Twentieth Century Society 77 Cowcross Street London EC1M 6EJ Tel 020 7250 3857