

*Report of the Care of Cathedrals Measure Review Group*

**GENERAL SYNOD**

**REPORT OF THE CARE OF CATHEDRALS MEASURE  
REVIEW GROUP**

**Chairman:** Mrs Janet Atkinson (Durham)\*

**Members:** Mr Keith Bamber – Receiver General,  
Winchester Cathedral  
Mr Ian Dunn – Cheshire County Librarian  
Mrs Margaret Sedgwick+  
The Very Revd Colin Slee – Dean of  
Southwark\*  
Mr Martin Stancliffe - Surveyor of the Fabric  
of St Paul’s Cathedral  
Mr Robert Walker – Conservation Manager,  
South Cambridgeshire District Council

\* General Synod member

+ General Synod member (Coventry) to October 2000 (Mrs Sedgwick continued to attend meetings, at the invitation of the Group, from October 2000 onwards)

**Consultants:** Dr Richard Gem – Secretary to the Cathedrals  
Fabric Commission for England (“the CFCE”)  
Mr Colin Pordham – Chapter Clerk, Norwich  
Cathedral (Ecclesiastical Law Association)  
Mr Ed Peacock (Bishoprics and Cathedrals  
Secretary of the Church Commissioners to 31st  
January 2001) – attended as necessary

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### **The background to the setting up of the Group**

1. The Archbishops' Council decided in July 1999 that there should be a review of the Care of Cathedrals Measure 1990 ("the Measure"), including the Care of Cathedrals (Supplementary Provisions) Measure 1994. The terms of reference for the review were as follows:-
  - (a) Without prejudice to the basic principles of the *Care of Cathedrals Measure 1990*, to examine whether the detailed provisions of this legislation require amendment, either in the light of operational experience since 1991, or to meet the requirements of continuing the Ecclesiastical Exemption.
  - (b) To consider the recommendations of the *Archbishops' Commission on Cathedrals* relating to cathedral fabric, and to examine whether any revision of, or addition to, the *Care of Cathedrals Measure 1990* is desirable, whether to give effect to these recommendations, or in consequence of the *Cathedrals Measure 1999*.
2. Several factors came together to make this an appropriate time at which to proceed with a review of the Measure.
3. It had always been envisaged that the operation of the Measure (the majority of which came into force on 1st March 1991) should be reviewed after five years' experience of its working. John Newman, who carried out a review of the ecclesiastical exemption from listed building controls for the Department for Culture, Media and Sport ("the DCMS") in 1997, was informed of this. In his report, Mr Newman concluded that the system of monitoring and controls established by the Measure was working effectively, with two relatively minor exceptions. The Report, which the Government subsequently accepted, went on to make a general recommendation that in view of the fact that the CFCE had adequate staffing with professionally equipped officers and also of the General Synod's intention to review the operation of the Measure, there was no need for an automatic further review by the Government of the arrangements for the Church of England's cathedrals in three years' time, such as was proposed in relation to non-cathedral churches.

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4. This was also an opportune time for a review following other work to implement recommendations by the *Archbishops' Commission on Cathedrals* in its report *Heritage and Renewal*. The Cathedrals Measure 1999 ("the 1999 Measure"), based on a number of the Commission's recommendations, and dealing in particular with the governance of cathedrals, had become law. However, the Follow-Up Group to the Commission had taken the view that in general those recommendations contained in the Commission's Report which related to fabric matters should be deferred for subsequent consideration in the context of the intended review of the Measure.

### **A summary of the work undertaken by the Group**

5. The Group had its initial meeting in November 1999 and has met on nine subsequent occasions. The Group has conducted a wide-ranging and detailed review of the whole of the Measure; it has also considered the recommendations in *Heritage and Renewal* and taken them into account in its work, and has examined a number of other issues relating to the care of cathedrals. The guiding principles the Group has followed in carrying out the review, some of which mirror recommendations in *Heritage and Renewal*, are set out in paragraphs 6 to 12 below.
6. The Group's terms of reference limited it to a review of the detailed provisions rather than the basic principles of the Measure. As explained in paragraph 15 below, its own work and the response to its first consultation led it to share the view expressed in the *Newman Report* on the ecclesiastical exemption (paragraph 3 above) that in general the Measure is working effectively. Thus in the Group's opinion there was in any event no need to alter the basic principles and structure of the Measure.
7. However, the Group identified a number of procedural deficiencies in the Measure that it considered should be addressed, and also some consequential amendments that should be made as a result of the passage of other legislation, such as the 1999 Measure. (The Group also worked on the basis that by the time any legislation it recommended became law, all cathedrals would have completed the process of transition to the 1999 Measure. Although at the time this report was prepared about one-third of the cathedrals had not yet done so, the report refers throughout to "the Chapter", rather than to the "administrative body", which was the term used by the Measure

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- by reference to the Cathedrals Measure 1963, and to the “cathedral administrator” rather than to the “chapter clerk”.)
8. In general, the Group was satisfied that the current balance of responsibilities between the CFCE and the Fabric Advisory Committees (“FACs”) should be maintained (see also paragraph 42 below). The implications of this, the areas where the Group considered that some adjustment was needed, and the important subject of the relationship between the CFCE and FACs, are addressed, in particular, in paragraphs 38 to 44 below.
  9. In the Group’s view, it was important that the legislation should not become unnecessarily prescriptive, beyond what was already laid down in 1990. Wherever appropriate, guidance on good practice should be preferred to specific new duties imposed by legislation.
  10. The Group also considered it essential that the financial constraints on the CFCE and the cathedrals and other constraints on resources were borne in mind when considering the role and functions of the CFCE or the demands placed on it and on cathedrals.
  11. In order to reduce the administrative burden on cathedrals, the Group considered that instances of “dual control” (where permission is needed both under the Measure and from secular authorities) should be eliminated in all cases where it was possible to do so without frustrating the objectives of the Measure. (See also paragraphs 134 to 148 below.)
  12. The Group did not give specific consideration to matters that are properly to be dealt with by Rules rather than by the Measure. **However, it recommended that the Care of Cathedrals Rules 1990 should be reviewed and revised as necessary following the amendments to the Measure, taking account of any relevant implications of the Human Rights Act 1998.** (See also paragraph 121 below.)
  13. At an early stage in the Group’s work, it was informed that there was a proposal to give further consideration to some aspects of the cathedrals’ investment and related powers and the legislation on cathedral endowments in the 1999 Measure. This could have been relevant to the Group’s work in that one possible issue was the extent to which some of the items included in the inventory, often of considerable financial value, should be regarded as part of the

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endowment. However, the Group was advised that these matters were complex and would need further investigation and full consultation before draft legislation could be prepared. The Group therefore accepted the recommendation that they should not be dealt with in the same draft legislation as the amendments to the Measure which the Group was proposing.

### ***First Consultation***

14. As its first task, the Group undertook a wide ranging consultation with cathedrals and other interested parties with a closing date of March 2000. A substantial response was received from cathedral administrative bodies, FACs, the CFCE, professional organisations, local planning or civic authorities, English Heritage, the Council for the Care of Churches, the Secretary to the Appointments Committee, members of the General Synod and others. A notice placed in every cathedral and an open letter from the chairman in the Church press also prompted a number of members of the public to make submissions. A full list of those who made submissions in this first consultation is provided as Appendix I.
15. Having considered carefully all the submissions received in the first consultation and on the basis of its work up to that point, the initial conclusion of the Group was that the Measure was generally working well and appeared to need only slight modification in certain areas, although the Group was also minded to make some additional recommendations regarding guidance on good practice and other matters. This preliminary view endorsed the conclusion of the *Newman Report*, as mentioned in paragraph 6 above.

### ***Second consultation***

16. As the next stage in its work, the Group decided on a further and more specific consultation on the results of its general assessment of the results of the first consultation and its own work on the Measure. The Group agreed that all those consulted in the first consultation should be included in the second consultation with the exception of the diocesan bishops, members of the General Synod and church members and the general public. This second consultation was undertaken at the end of July 2000 with responses being received by October. Those consulted were asked for their views on a number of proposed changes of substance to the Measure (and various other specific matters) that the Group was at

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that point minded to recommend. The results of this second consultation were considered fully by the Group in reaching its final recommendations as contained in the remainder of this report. A full list of those who made submissions in the second consultation is provided as Appendix II.

### ***Meetings with Government officials and others***

17. Officers of the Group also met with officials from the DCMS and the Department of the Environment, Transport and the Regions (“the DETR”) in February 2001 to discuss the Group's initial views on planning permission, listed building consent and scheduled monument consent as set out in its second consultation. The Group gave detailed consideration to a report of this meeting before formulating its final recommendations (see paragraphs 134 to 148 below) on those matters.
18. The Secretary and Deputy Secretary of the Society for the Protection of Ancient Buildings (“the SPAB”) attended one meeting of the Group to discuss the SPAB's concerns over the notification of work involving repairs to stonework and other more general matters. The issues raised by the SPAB and the Group’s response to them are set out in detail in paragraphs 47 to 51 below.

## **THE GROUP'S CONCLUSIONS AND RECOMMENDATIONS**

***A Summary of the Group's General Principles and Recommendations can be found on pages 57 to 68.***

### **Part A – Specific provisions in the Measure**

19. This Part of the report works through the Measure section by section, followed by the Schedules, and sets out any recommendations which the Group wished to put forward for amendment to the current wording of the section or Schedule concerned or for other action (shown in bold). It also deals with those proposals for change which appeared in the submissions to the Group but which the Group did not consider should be implemented.
20. For ease of reference, there is a brief summary of the current provisions of each section of or Schedule to the Measure before the Group's conclusions on the working of that section or Schedule and

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its recommendations are given. The full text of the Measure is published by The Stationery Office and can be ordered by telephone (0870 600 5522) or e-mail (book.orders@theso.co.uk). It is also available on the relevant Stationery Office website (www.legislation.hmsso.gov.uk/)

### *Section 1*

*Section 1 provides that any body given functions of care and conservation by the Measure must, in exercising those functions, have due regard to the cathedral's purpose as the seat of the bishop and a centre of worship and mission.*

21. The Group agreed that the definition of the cathedral's purpose as contained in this section was the appropriate one and should not be elaborated or changed in any way, especially as it had also been embodied in the 1999 Measure.
22. The Group noted that section 4(8)(g) of the 1999 Measure made the Chapter responsible for ensuring that all necessary repairs and maintenance were carried out in respect of the cathedral and its contents (as well as other buildings and monuments). In addition, the long title to the Measure already set out its purpose as "to make further provision for the care and conservation of cathedral churches". **However, the Group took the view that it would also be desirable for the Measure to include an appropriately worded general provision, relating to functions under the Measure and the bodies which had those functions, which would emphasise and reinforce the principle of promoting care and conservation.** In the Group's view the principle of care and conservation was one which complemented and supported the principle of having regard to cathedral's purpose; caring for and conserving the cathedral was both a consequence of having regard to the cathedral's purpose and necessary in order to enable the cathedral to serve that purpose.
23. A further issue was whether there should be a general statement in the Measure that bodies dealing with applications for approval should have regard, in particular to the desirability of preserving the historic character of the cathedral. The Group considered that such a provision should appear in the Measure (see paragraph 67 below), but that it would be out of place in or immediately following section 1.

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### **Sections 2 and 5**

*Section 2(1) provides that the Chapter shall not implement a proposal for any of the following unless it has been approved under the Measure:-*

- *works that would materially affect:-*
  - *the architectural, archaeological, artistic, or historic character of the cathedral or a building within its precinct which is for the time being used for ecclesiastical purposes;*
  - *the immediate setting of the cathedral; or*
  - *any archaeological remains within the precinct;*
- *the sale, loan or other disposal of any object owned by the cathedral which is of architectural, archaeological, artistic or historic interest; or*
- *the permanent addition of any object which would materially affect the architectural, archaeological, artistic or historic character of the cathedral.*

*Under section 2(2) these provisions do not apply to anything done by the Chapter under the cathedral constitution and statutes, with respect to the ordering of services or otherwise in furtherance of the mission of the cathedral, which is of a temporary nature and does not materially affect the fabric.*

*Section 5(1) provides that the FAC (after consultation with the Chapter and subject to the agreement of the CFCE) may determine that the provisions of section 2 are not to apply to a particular class or description of proposals specified by the FAC. Section 5(2) gives the FAC power, if the Chapter so wishes, to determine whether a particular proposal falls within a determination by the FAC under section 5(1).*

24. The Group noted that the principles and procedures under the Measure were intended to meet no less a standard than those set out for churches enjoying the ecclesiastical exemption in the Government's Code of Practice for denominations' own control systems, and that they were also intended to be broadly comparable to the provisions of the faculty jurisdiction. **The Group therefore agreed that section 2 should be retained, with limited**

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- amendments, as covering those categories of proposed works that should continue to require approval.
25. It was drawn to the Group's attention that whereas the sale, loan or other disposal of important objects was covered by section 2(1)(b), work to these objects was not covered by section 2(1), although it might detract from their character and diminish their importance. **The Group agreed that section 2(1)(b) should be expanded to include a specific requirement for approval for conservation work on objects of architectural, archaeological, artistic or historic interest.**
  26. The Group at the same time recognised the importance of a balanced approach to conservation which took fully into account the requirements of the cathedral as a living and developing building. Conservation, preservation and restoration all needed to be component parts in the evolving use of the cathedral building. **The Group agreed that the proposed amendment to section 2(1)(b) in relation to conservation work on objects should apply only in the case of work that would materially affect the character of the object in question as an object of architectural, archaeological, artistic or historic interest.**
  27. A further point which the Group noted on section 2(1)(b) was that it applied only to objects "the property in which is vested in the chapter". **The Group agreed that section 2(1)(b) should be amended so that the position was the same where the cathedral had or was entitled to possession or custody of an object, even if it was not the undoubted legal owner – a situation which might sometimes arise where, for example, a historic object was found within the cathedral or in land belonging to it, particularly as a result of archaeological work. It was also agreed that section 2(1)(b), and the interpretation provisions in section 20 if appropriate, should be amended to take account of the fact that under the 1999 Measure it was the new corporate body established for the cathedral under that legislation which would be the legal owner of the cathedral property, and that this body should also be referred to in the context of possession or custody. (See paragraph 100 below.)**
  28. In response to the submission that bodies other than the Chapter should be given the power to apply to the CFCE or FAC for approval for proposed works to cathedrals, the Group agreed that

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this responsibility should remain exclusively with the Chapter. There was no evidence that the Chapters wished to be relieved of it and the Group could envisage real dangers ahead if the cathedrals felt that control was being lost.

29. A separate issue was whether the existing wording dealt adequately with proposals for work to be carried out by a body other than the Chapter. There were two main situations where this might arise – where a tenant of the cathedral was proposing to do work to the property subject to the tenancy, or where a statutory undertaker or other utility provider wished to do work within the precinct. **Such work would normally require the consent of the Chapter, and the Group recommended that any new leases of property within the precinct should normally require such consent. The Group also considered it would be helpful to amend section 2(1), for the avoidance of doubt, to include an express provision that where there was a proposal for works of a kind described in section 2(1) to be carried out by others with the permission of the Chapter, the Chapter (as is already the case) is required to obtain approval under the Measure before giving its consent.**
  
30. The Group noted that there were some cases where another party would be able to carry out works within the precinct without the Chapter's consent. This could arise where a tenant was not required to obtain such consent under the terms of the lease, or where a statutory undertaker had compulsory powers to carry out works (possibly in an emergency). The Group noted that, particularly in the case of tenants, such works would probably fall outside the main area which still enjoyed the ecclesiastical exemption, so that it might in any case be necessary for the tenant to obtain listed building consent. In any case, in the absence of any evidence that these types of cases were causing serious practical problems, the Group considered that it was not appropriate to make special provision for them in the Measure. The main reason for this was that the whole structure of the Measure and of the Care of Cathedrals (Supplementary Provisions) Measure 1994 had been drawn up on the basis that it was the Chapter which would apply for approval and that any enforcement action would be taken against it. If that ceased to be the case substantial changes would be needed – for example, it was questionable whether the bishop, as Visitor, was the appropriate office-holder to take enforcement action in such cases. It was also possible that a change in the position of tenants might be regarded as impinging on their private rights, and could

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thus give rise to problems with the Ecclesiastical Committee of Parliament.

31. **As regards section 5, the Group agreed that the drafting required amendment to clarify and improve the criteria and procedure for determining whether a proposal required approval before being carried out. In particular, the part of section 5(2) which confined it to determinations under section 5(1) should be deleted, and FACs should be given a general power to determine whether a proposal required approval, which should appear in the Measure before the present section 5(1).**
32. However, the Group was firmly of the opinion that there should *not* be a list in the Measure of specific *de minimis* works that did not require approval. In practice, the existing system worked satisfactorily, especially given the powers in section 5. Flexibility was important, and in the Group's view what was needed was general guidance, with examples, coupled with advice on specific cases where that was needed, rather than a fixed list.

### **Sections 3 and 4**

*These two sections deal respectively with the establishment and functions of the CFCE and the FACs.*

*Section 3 provides for the establishment of the CFCE, which is subject to Schedule 1 to the Measure (see paragraphs 104 to 122 below). Under section 3(2), the CFCE is under a duty:-*

- *to give advice to the Chapter and FAC of a cathedral on the care, conservation, repair or development of the cathedral;*
- *to consider and determine any application made to it in accordance with the Measure;*
- *to promote co-operation between the CFCE and organisations concerned with the care and study of buildings of architectural, archaeological, artistic or historic interest in England;*
- *to assist Chapters by participating in educational and research projects; and*

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- *to maintain, jointly with the Council for the Care of Churches, a library of books, plans, drawings, photographs and other material relating to cathedrals and the objects in them.*

*Section 4(1) provides for the Chapter and the CFCE jointly to establish an FAC for each cathedral. Under section 4(3), the FAC is subject to Schedule 2 (see paragraphs 123 to 133 below). Section 4(2) places duties on the FAC:-*

- *to give advice to the Chapter of the cathedral concerned on the care, conservation, repair or development of the cathedral; and*
- *to consider and determine any application made to it in accordance with the Measure.*

33. As regards the duty to give advice, the Group considered that the guidance issued by the CFCE was of major importance (the latest guidance note, on *The Care, Conservation and Development of Cathedrals*, having been issued in 1999). Further work was also being undertaken by the CFCE in respect of producing guidance leaflets (which were produced while the Group was sitting) and a website page. **The Group agreed that the CFCE should be asked to keep its guidance material up to date and to consolidate that material where appropriate.**
34. **The Group agreed that sections 3(2) and 4(2) should be amended to make it clear that the part of the CFCE's and the FAC's duties under those provisions which involved the provision of advice should include giving advice not only in relation to the cathedral church itself but also in relation to the cathedral's ancillary buildings, contents and precinct (including the landscape and natural environment within the precinct).**
35. **The Group also agreed with the recommendation in *Heritage and Renewal* set out in paragraphs 169 and 176 below, and having considered the issues further, recommended that section 3(2) should also be amended to give the CFCE a specific duty to promote, in consultation with others:-**
- **standards of good practice for the care and conservation of cathedrals. (This would, for example, include standards on fire safety audits, developing a fire safety policy statement**

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and carrying out disaster recovery planning - see paragraphs 176 to 177 below);

- **standards on the role and duties of the Cathedral Architect and Cathedral Archaeologist. (See paragraphs 85 to 92 and 169 below); and**
  - **standards on the compilation, maintenance and dissemination of information about the architectural, archaeological, artistic and historic interest of cathedrals.**
36. In making the recommendations in paragraphs 34 and 35 above on section 3(2), the Group noted that they would widen the existing advisory duties of the CFCE, for example to giving advice in the field of landscape and the natural environment within the precinct and to promoting standards of good practice for the care and conservation of cathedrals. However, the Group considered that these proposals and the corresponding proposals for section 4(2) relating to FACs would have no substantial financial implications for cathedrals.
37. The Group noted that the proposed new provisions regarding the landscape and natural environment within the precinct took account of the fact that conservation of the built environment could not be entirely divorced from the landscape in which it stood – something now widely recognised in the conservation world generally. It was not proposed that technical experts in these areas be appointed as additional members of the CFCE, since the CFCE gives informed general advice and not technical advice – although it may recommend to a cathedral that it should consult technical experts.

### **Section 6**

*Section 6 lays down which applications for approval must be dealt with by the CFCE rather than the FAC of the cathedral concerned, namely those for proposals that would involve:-*

- *permanent alteration of the fabric of, or demolition or partial demolition of, the cathedral church or any building within the precinct which is for the time being used for ecclesiastical purposes;*

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- *disturbance or destruction of archaeological remains within the precinct;*
- *the sale, loan or other disposal of an outstanding object; or*
- *considerations of such special architectural, archaeological, artistic or historic interest that the CFCE “calls it in” by determining that it must decide on the proposal, or (in a case where the application was initially made to the FAC) that at least three members of the FAC decide it must be referred to the CFCE.*

*All other applications are made to and determined by the FAC. At the request of the Chapter concerned, the CFCE has power to determine whether a particular application should be made to it or to the FAC.*

38. The Group noted that in broad terms the categories of proposals to be referred to the CFCE corresponded with those that, in the absence of the ecclesiastical exemption, would be subject to listed building control (as applied to Grade I and II\* buildings) or scheduled monument control. The Group considered that in general this was appropriate and agreed that the existing categories should be retained, while identifying several matters of detail that should be addressed.
39. The relationship between the CFCE and FACs raised a number of important issues which the Group considered at this point, although they also related to sections 7 and 8. There was a feeling on the part of some FACs that the procedure whereby important proposals were referred to the CFCE could leave them without any meaningful input into the decision-making process. However, the Group was conscious that the current irregular pattern of meetings displayed by some FACs would mean a considerable delay in the processing of applications to the CFCE (under section 8 of the Measure) if a provision for a preliminary scrutiny of all applications by the FAC were made a statutory requirement, as proposed by English Heritage and others.
40. In practice, it was clear that the CFCE already expected that the FAC would discuss a proposal at an early stage before a formal application was made under the Measure. **The Group recognised, however, that a more formal process was required than that which currently existed under section 8 of the Measure for the**

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- FAC to inform the CFCE of its views. The Group considered the section should be amended by adding a statutory requirement for the FAC secretary, on receipt of a notice under section 8(1), to write to the CFCE stating whether the FAC had considered the proposal in question and, if so, what the views of the committee were.**
- 41. It was also agreed that the FAC chairman and secretary should be notified by the cathedral administrator of an impending CFCE visit to the cathedral in relation to an application. The FAC should then decide on one or more of its members who were to meet the CFCE delegation as the representatives of the FAC, with a right to speak on that occasion on behalf of the whole FAC and to represent its views.**
  42. The Group agreed with the principle that as many decisions as were appropriate should be taken by the FAC (see paragraphs 8 above and 43 to 44 below) and noted that the majority of applications currently made under the Measure were dealt with by the FACs. Set alongside this, the Group recognised the important role of the CFCE in deciding on the minority of applications that needed its particular wealth of expertise and national knowledge.
  - 43. In the light of these principles, the Group agreed to a proposal from the CFCE that a provision should be inserted in the Measure to allow the CFCE to waive its power and duty to determine applications that came within its jurisdiction in particular “borderline” cases. To achieve this, the CFCE should be given a discretionary power to issue a written declaration in respect of a particular proposal which would normally come within any of the first three headings under the summary of section 6 set out above, but which in its view did not need to be considered at the national level, and this declaration should permit the application for approval to be made to and determined by the FAC.**
  44. The Group also agreed that a similar power should exist in relation to classes or descriptions of proposals (subject to prior consultation with English Heritage and the National Amenity Societies and, in relation to proposals within section 2(1)(a), with the representatives of local planning authorities). This would parallel the FAC’s power under what is at present section

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- 5(1) to determine that section 2 is not to apply to a particular class or description of proposals (see paragraph 31 above).
45. **On the basis that conservation work on objects of architectural, archaeological, artistic or historic interest is to require approval (see paragraph 25 above), the Group also agreed that section 6(1) should require the application for approval of such work on objects designated as of “outstanding” interest to be made to the CFCE.**
  46. Under section 13(2) the designation of an object as of “outstanding” interest is made by the FAC after consultation with the CFCE, and the Group did not recommend any change in that provision (see paragraph 83 below). However, given that the understanding of an object’s importance might change, the Group recognised it might occasionally be appropriate for the CFCE to call in an application for approval in relation to an object which was not designated as of outstanding interest in the inventory.
  47. At the meeting at which officers of the SPAB addressed the Group (see paragraph 18 above), they explained that in general the SPAB was satisfied that it was being kept notified of work involving permanent alterations to the fabric and that such work was being undertaken in a manner which would not give it cause for concern. Nevertheless, some proposed works involving significant stonework repair were the subject of an application to the FAC and not the CFCE, and were therefore not being notified to the national amenity societies. The SPAB was concerned at this, and specifically at the potential for considerable alteration to the stonework over time from routine repair works, even where these were based on the principle of replacing like materials with like; it pointed out that such works to a secular building would in many cases require an application for listed building consent, of which SPAB would be notified.
  48. In response, the Group noted that the phrase “works which would permanently alter the fabric” in section 6(1)(a) of the Measure already included repair work where this materially altered the architectural, archaeological, artistic or historic character of the building. **However, the Group agreed that it would be desirable to make that clear by an express provision in the Measure, though without detracting from the proper responsibilities of**

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**the FAC in relation to repairs where such an alteration was not involved.**

49. In response to the SPAB's concerns, the Group also made recommendations regarding notice of proposals and regarding monitoring of compliance with conditions attached to approvals which are set out in paragraphs 56 to 58 below.
50. The Group agreed that, subject to the amendments outlined in paragraphs 43, 45 and 48 above, the present provisions of section 6 were what was needed and therefore should be retained.
51. The Group recognised the importance of consistency in applying the criteria in section 6, but also recognised that occasional differences of interpretation would inevitably arise in practice as to the scope of what should be referred to the CFCE, which could be seen by some as a lack of consistency. In this context, the Group noted the request by the Ecclesiastical Architects' and Surveyors' Association for clear guidance, and also noted the concerns of the SPAB (see paragraph 47 above). **The Group agreed that, in order to secure consistency, it was important not only for the CFCE to give clear guidance but also for cathedral architects and archaeologists to understand the legal requirements and to advise their clients accordingly in relation to applications for approval.**

### **Sections 7 and 8**

*Section 7 lays down procedural requirements in relation to applications for approval by the FAC and regulates the way in which they are dealt with by the FAC. It provides for:-*

- *the display of a notice specifying where details of the proposal are available for inspection and stating that representations may be sent to the FAC secretary, and the copying of the notice to the CFCE and to the local planning authority (except in cases relating only to objects);*
- *a duty on the FAC to consider any representations;*
- *power for the FAC, if it decides to approve the proposal, to impose conditions; and*

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- *the display of a notice of the FAC's decision, and the copying of such notices to the CFCE, to the local planning authority (except in cases relating only to objects) and to the Chapter.*

*Further details are prescribed by Rules.*

*Section 8 lays down procedural requirements in relation to applications for the approval of the CFCE and regulates the way in which they are dealt with by the CFCE. It provides for:-*

- *the display of notices by the cathedral administrator when an application is made, stating that representations may be made to the secretary of the CFCE and for the copying of notices to various other bodies;*
- *a duty on the CFCE to consider any representations;*
- *power for the CFCE, if it decides to approve the proposal, to impose conditions; and*
- *display of a notice of the CFCE's decision and for the copying of the notice to various other bodies.*

*Further details are prescribed by Rules.*

### ***Notices and notification of applications and decisions***

52. Subject to paragraphs 53 to 61 below, the Group was satisfied that the provisions of the Measure provided all the safeguards regarding notification of the proposals that should reasonably be incorporated into legislation to ensure that proposals were open to proper public inspection and debate.
53. Similarly, the Group did not consider that it was necessary to amend the provisions in section 8(3) for the display of a notice of a decision by the CFCE and the sending of copies of the notice. The Group did not favour the removal of the requirement to display the notice of the decision by the cathedral administrator. It was agreed that this should be retained in order to satisfy the genuine public interest in the CFCE's determinations and that the requirement was particularly important when it was remembered that under the existing Rules the CFCE's meetings were not held in public. The display of decisions was a requirement of secular planning law and

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- the Group was not convinced that a strong argument had been presented for removing the corresponding provision from the Measure.
54. The Group noted that the CFCE was content with the current provision for it to be notified of public notices regarding applications for approval to the FAC at the same time as those notices were displayed at the cathedral in the prescribed manner. The usual practice was for the cathedral administrator to have informal contact with the CFCE before that stage if there was any doubt as to whether an application to the CFCE rather than the FAC was required, and in only a small number of cases were applications initially made to FACs that should properly have been made to the CFCE.
55. The Group also noted that the procedure followed by the CFCE, in agreement with the National Amenity Societies, for notifying the Societies of an application to or decision by the CFCE under section 8 was for a letter to be sent to one body - the SPAB - to be copied and forwarded to the other appropriate Societies. The Group was satisfied in principle with this arrangement, which was expressly envisaged by the Measure. Subject to paragraphs 56 to 58 below, the Group therefore did not feel that any further provision was required in the Measure.
56. One of the concerns expressed by the SPAB was that it was not necessarily being kept informed of significant proposals for stonework repair (see paragraph 47 above). **Although the Group recognised that much could be achieved in this area by good practice guidelines, it agreed that a further statutory provision was needed to ensure that Chapters kept the SPAB informed about proposals affecting stonework which fell within the scope of section 2 but which did not require an application to the CFCE. The Group agreed that this provision should also be extended to include English Heritage and that the same principle should apply to all applications to the FAC for approval of a proposal under section 2(1)(a)(i). Accordingly, the Group agreed that section 7(1) should in addition provide for the National Amenity Societies (or the body appointed jointly by them) and English Heritage to be sent a copy of any public notice displayed in the case of an application to an FAC for approval of a proposal within section 2(1)(a)(i).**

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57. As regards the contents of the notice, the Group agreed that it should include a brief project description that would cover the location, extent and nature of the work proposed, and that the same should apply to all notices which had to be given of applications to the FAC or the CFCE for approval of proposals . The project description should form a mandatory part of the form of notice prescribed by the Rules, and should also be kept as part of the register of applications maintained by the CFCE or the FAC (see paragraph 71 below). In addition, it would be available for use for other purposes, such as applications for grant aid.
58. In view of this, the Group did not consider that a notice to the SPAB need be accompanied by copies of the full supporting documentation. **Rather, the SPAB would need to decide, on the basis of the project description, whether it should arrange to inspect the full details at the place where they were publicly available or inform another National Amenity Society which might wish to do so, and the same applied to English Heritage.**
59. The Group did not consider that any further specific provision in the Measure was required to encourage local voluntary bodies that might be consulted in relevant cases, and amenity societies such as Friends of the Cathedral or Civic Trusts, to comment on proposals. However, **the Group recommended that the Chapter, in consultation with the FAC, should make itself aware of appropriate local bodies.**
60. As regards notification of decisions to the local planning authority, which applied in cases other than those relating solely to objects, **it was agreed that the CFCE should directly inform the local planning authority of its decision in addition to informing the other bodies included in section 8(3), rather than this being a duty placed on the cathedral administrator as at present.**
61. The Group noted that there was some concern about public notices being displayed in a sufficiently prominent place. In the Group's view this was a matter for the Rules and for guidance on good practice.

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### *Disposal of outstanding objects*

62. **The Group agreed to a suggestion from the CFCE in relation to section 8(1)(b) that where a proposal from the Chapter was one for the sale or other disposal of an outstanding object (and would therefore come to the CFCE), then the CFCE should be able to seek advice from an outside and independent body that would be qualified to evaluate the financial arguments put forward by the cathedral for the proposed sale.**
63. Although the CFCE had not been called upon to decide on such an application since 1990, it was recognised that such an application could arise in the future and that the CFCE needed to be fully equipped to deal with that contingency, which was not the case at present. National publicity surrounding the proposed sale of national treasures and the possible involvement of Government increased the imperative to strengthen the CFCE's ability to weigh financial arguments in its deliberations and therefore reinforce the credibility of its decisions both for the cathedrals involved and for the Church's own system of regulation.
64. The Group took the view that the only obvious body which had the necessary independence coupled with the necessary expertise for this purpose was the Church Commissioners, and an approach was therefore made to them. It was subsequently reported to the Group that at a meeting of the Board of Governors on 23<sup>rd</sup> November 2000 the Church Commissioners had accepted the recommendation of their Bishops and Cathedrals Committee to agree to exercise this modest function, provided it was placed on them by an amendment to the Measure and would not involve giving advice on any valuation of the object in question nor on any aesthetic or pastoral considerations. The Board of Governors accepted that this would be a logical extension of the Church Commissioners' existing financial and endowment role in relation to cathedrals. **The Group therefore recommended that the Measure should be amended accordingly.**
65. The Group noted that prior to the 1999 Measure many cathedral statutes had required the Chapter to seek the views of the Visitor before selling an important item belonging to the cathedral, but that when cathedrals which were drawing up their new constitutions and statutes under the 1999 Measure included such a provision they were asked to consider whether it was still necessary in view of the

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controls in the Measure. The Group also considered whether there should be a specific provision in the Measure for the cathedral Council to be consulted on a proposed sale or disposal. The Group noted that under the 1999 Measure the Chapter is responsible for financial management and for the disposal of property. However, the Group considered that as a matter of good practice the Council should have a full opportunity to make its views on any proposed sale or disposal known under section 3(6)(b) of the 1999 Measure (under which it would receive and consider the annual budget of the cathedral) at the stage when the initial financial proposals had been formulated, and well before such a proposal was submitted to the CFCE.

66. The Group noted that under section 13 such “outstanding” objects will appear in the cathedral inventory and be designated as of outstanding interest by the FAC in consultation with the CFCE (see paragraph 83 below).

### *Miscellaneous points relating to applications for approval*

67. The Group noted that the DCMS’s Code of Practice includes a core requirement that, for buildings under the ecclesiastical exemption, a decision-making body must “take into account ... the desirability of preserving historic church buildings and the importance of protecting features of architectural merit and historic interest (including fixtures).” **Although this principle had been largely adhered to in implementing the Measure, the Group agreed that, for the avoidance of doubt, a provision was needed in the Measure requiring the body to whom an application is made to have regard, among other matters (which included the cathedral’s purpose as set out in section 1 of the Measure ), to the desirability of preserving the cathedral church and any listed building in the precinct for the time being used for ecclesiastical purposes, together with any features of special architectural, archaeological, artistic or historic interest which they possess, and the desirability of preserving the immediate setting of the cathedral and any archaeological remains within the precinct. This principle should also apply on an appeal.**
68. In respect of section 8(2), the Group accepted that difficulties could arise in cases where the CFCE gave a conditional consent requiring further details or information to be supplied and approved before the proposal was implemented, and where the parties who had a

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- right to be notified of the original application might not have an opportunity of making representations on the further information. It was agreed that the remedy for this should be provided in guidance rather than legislation, thus preserving the CFCE's discretion over the extent of any further round of notification that it considered appropriate.
69. The Group also considered whether a time limit should be imposed on the commencement of work to implement an approved proposal, as favoured by English Heritage and others. **It was agreed that a time limit of five years (or some other specified period, if the CFCE or FAC decided this was appropriate in the circumstances of the particular proposal) should apply to any approval given. The approval would therefore lapse if works were not begun within the specified period.** The Group noted that a further application for a renewal of approval would always be possible if work did not begin within the original time limit.
70. The Group was in no doubt that it was the responsibility of the Chapter to ensure that works were carried out in compliance with any conditions that the CFCE or FAC attached to an approval. **The Group agreed that a provision should be inserted to require the cathedral administrator to inform the CFCE or FAC that the works had been completed, which would then enable the CFCE or FAC to satisfy itself that any conditions had been complied with.** The CFCE or FAC would continue to be vigorous in ensuring that its conditions were adhered to if non-compliance was brought to its attention. Nevertheless, there was no evidence that at present non-compliance was a serious problem that would justify additional resources being sought for more complex monitoring procedures.
71. **In response to a request from the DCMS, the Group agreed that FACs should be required to keep registers of applications that came to them and that the CFCE should be required to follow its existing practice of keeping a separate register of applications that had come to it. It was noted that further consultation with the DCMS might well be needed on the form and contents of the registers but, in the meantime, the Group considered that progress should be made in establishing the FAC registers, which could then be adapted to meet any future DCMS requests.** It was noted that this requirement would parallel the existing requirement under the section 15(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 for the

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Diocesan Advisory Committee to keep a register of applications for faculties referred to it for advice. The Group had also noted the practical value of the register of planning applications in the secular field and agreed that registers of applications could prove equally valuable for cathedrals.

### **Sections 9 and 10**

*These sections provide an appeal procedure for the Chapter. If an application is made to an FAC and approval is refused, or given subject to conditions, the Chapter may appeal to the CFCE and if the CFCE refuses to give unconditional approval, what is in effect a further and final appeal is possible by requesting a review by a Commission of Review. If the initial application is made to the CFCE and it refuses to give unconditional approval, a request can again be made for a review by a Commission of Review. There is also provision for an application to be referred from the FAC to the CFCE, or from the CFCE (either on an initial application or an appeal) to a Commission of Review, if the FAC or the CFCE, as the case may be, fails to give its decision within three months.*

72. Subject to the matters set out in paragraphs 73 and 74 below, the Group did not feel that the appeals provisions needed amendment. There had been no cases where the appeal procedure had been invoked since 1990 and although it was comparatively complex, it also had the merit of being clear.
73. The Group gave careful consideration to the proposition that a power should be given to English Heritage to advise the Secretary of State to refer a decision of the CFCE in favour of a proposal to a Commission of Review. Such a power would apply only where the application for approval of a proposal had been made to the CFCE direct (rather than to the FAC) and related to a listed building (or a scheduled ancient monument), and where English Heritage had made a written representation to the CFCE against the proposal.
74. The Group noted both that the ultimate safeguard of removing the ecclesiastical exemption in a particular case or category of cases was already at the disposal of the Secretary of State, and also that the decisions of the CFCE were probably subject to judicial review. In view of this, the Group agreed that such a provision should not be inserted into the Measure, as it considered that such a power

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could undermine the principles underlying the Measure and accepted by all concerned when it was passed.

### **Section 11**

*Section 11(1) gives power to the CFCE, if requested by the Council for the Care of Churches, to give advice to the Council on proposed works in relation to a Church of England church other than a cathedral.*

*Under section 11(2), the CFCE may, on request, give advice to the Representative Body of the Church in Wales on proposed works in relation to a cathedral church in Wales and may, in exceptional circumstances and subject to consents, give advice on proposed works to a cathedral other than a cathedral of the Church of England or the Church in Wales, but in both cases only on condition that its expenses are reimbursed.*

*The CFCE is also given power by section 11(3) to exercise any functions in relation to moneys held by any other body or person for the benefit of cathedral churches generally which are delegated to it by that body or person.*

*Section 11(4) confers power on the CFCE, for the purpose of exercising its functions under the Measure, to acquire books, plans drawings and other material relating to cathedrals and from time to time to hold conferences for cathedral clergy and staff, cathedral architects and archaeological consultants, and others concerned with the care of cathedrals.*

75. The Group considered that no changes were needed to this section.

### **Section 12**

*Section 12(1) imposes a duty on the Chapter to consult the CFCE before appointing a cathedral architect under the Cathedrals Measure 1963 (and now the 1999 Measure). Section 12(2) requires the Chapter to appoint an archaeological consultant for the cathedral – defined by section 20(1) as a person possessing such qualifications and expertise in archaeological matters as the CFCE considers appropriate - except where, in the view of the CFCE, the archaeological significance of the cathedral does not justify such an appointment.*

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76. One of the submissions to the Group proposed that the requirement to appoint a cathedral architect should be amended to permit a chartered surveyor to be appointed instead of an architect. The Group, however, did not agree with this proposition. It noted that the role of the cathedral architect was much more extensive than that of the person carrying out a quinquennial inspection of a parish church under the Inspection of Churches Measure 1955, and that in particular it involved an important element of design skill, in which architects received specific training. The Group recognised that the wide training of an architect enabled him or her to provide a vital overall view of the cathedral that should not be lost. It was important to have this architect's perspective in the team (which could include chartered surveyors) which worked on a cathedral.
77. The Group also agreed that it should not be mandatory to appoint a structural engineer for the cathedral. It was far better to leave it to the cathedrals to engage such professionals as and when they were needed.
78. **The Group agreed that the title “Cathedral Archaeological Consultant” in section 12(2) should be changed to “Cathedral Archaeologist”, so as better to reflect the archaeologist’s role. However, to take account of local custom, individual cathedrals should be free to use their own titles if they wished, in the same way as they could in relation to the Architect under the 1999 Measure. The Chapter should also be required to consult the CFCE about the appointment, and not merely about the qualifications of a person proposed for appointment.**
79. It was suggested to the Group that cathedrals should have a full-time curatorial adviser. However, the Group noted that many cathedrals might not need or could not afford such an appointment. Although section 4(8)(g) of the 1999 Measure imposed a duty on the Chapter to ensure that necessary repairs and maintenance were carried out in respect of the contents of the cathedral, it was agreed that the way in which appropriate specialist advice in this field was obtained was not a matter for legislation; rather, it was a matter of good practice. However, in cases where the FAC considered that the Chapter should seek curatorial advice, it should inform the Chapter of this and of where it considered suitable advice could be obtained.

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### *Section 13*

*Section 13(1) lays a duty on the Chapter to compile and maintain an inventory of all objects in the possession of the cathedral that the FAC consider to be of architectural, archaeological, artistic or historic interest. This inventory must be compiled within five years after the section came into force (i.e. 1st October 1990). Under section 13(2), the FAC, after consultation with the CFCE, has a duty to designate those objects included in the inventory that it considers to be of “outstanding” architectural, archaeological, artistic or historic interest.*

*Section 13(3) provides that the Chapter must, within two years of the section coming into force, prepare a plan showing the extent of the land surrounding the cathedral that is owned by the cathedral and forward this to the CFCE. Under section 13(4) the CFCE, after consulting with the Chapter, will then indicate the precinct of the cathedral (for the purposes of the Measure) on the plan.*

80. The Group recognised that many cathedrals had not satisfied the requirement to complete the compilation of an inventory within five years of the Measure coming into force, and it noted the recommendation of the *Newman Report* that “all cathedral inventories should be completed as soon as possible, and at any rate within five years.” **The Group therefore agreed that the present requirement should be replaced by a more flexible one under which the initial compilation should be completed within such period as the CFCE, after consultation with the Chapter, considered reasonable in the circumstances of the case, and which would also allow for different sections of the inventory to be completed to different timetables.** The Group noted that Directions issued by the CFCE on the compilation and maintenance of the inventory were a requirement under the Rules and had legal force accordingly.
81. The Group accepted that once the Chapter had compiled the initial inventory, it needed to be continually up-dated by the Chapter in order to maintain its accuracy. In the Group’s view, stressing the existing requirement in section 13(1) “to maintain” the inventory and therefore keep it up to date on a regular – possibly at least an annual – basis was preferable to setting fixed dates for the review of inventories (such as 25 years). **However, the Group agreed that the Chapter should be required to report annually to the FAC on changes made over the preceding year to the inventory and**

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- to certify that the inventory was up to date. The FAC was the appropriate body to report to, as it had the duty to decide what items were of such architectural, archaeological, artistic or historic interest that they should be included in the inventory.
82. The Group noted that section 13(1) applied to objects “in the possession” of the Chapter, and that this had been interpreted as including an object owned by the cathedral even if, for example, it was permanently kept in the house of residence of the dean or one of the canons. However, the Group agreed that it would be preferable to put the position beyond doubt by amendments to apply section 13(1) to all objects the property in which is vested in the cathedral corporate body or of which that body had or was entitled to possession or custody. (See also paragraph 27 above.)
83. The Group decided that it was not necessary to recommend any changes to section 13(2) (see paragraph 46 above).
84. **The Group fully endorsed the view that a procedure needed to be put in place for amending precinct plans to take account of changes in land ownership.** The Group also noted that the meaning of the phrase “the precinct of the cathedral church for the purposes of this Measure” in subsection 13(4) had given rise to difficulties and had been the subject of an opinion of the Legal Advisory Commission. **The Group agreed that this subsection should be amended to provide a clearer definition of the precinct. The precinct as indicated on the plan should include so much of the land surrounding the cathedral church and in the ownership of the cathedral as, in the view of the CFCE, was necessary to protect the architectural, archaeological, artistic and historic context of the cathedral. The Group also agreed that the Measure should require the precinct plan to be amended as soon as any relevant changes occurred, so that it was kept up to date. This would obviate the need for a fixed five-year review.**

### **Section 14**

*Section 14(1) lays a duty on the Chapter to arrange for the cathedral architect (in consultation with the archaeological consultant, if any) to make a report to the Chapter (and copy it to the CFCE) during every five year period on the works that will need to be carried out as soon as practicable in relation to the cathedral church and their order of priority.*

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*The Chapter is also under a duty to keep a record of all works carried out in relation to the cathedral or its precinct. The first five-year period ran from the date the section came into force (i.e. 1st March 1991).*

*Under section 14(2), the Chapter is under a duty to keep a record of all works carried out in relation to the cathedral church or in its precinct.*

85. **The Group accepted that the requirement for the cathedral architect to make a report every five years should be amended to include a requirement for the report to be based on an inspection.** This would make the care of cathedrals legislation consistent with that for the inspection of churches under the Inspection of Churches Measure 1955, as amended, and for cathedral property other than the cathedral church itself under section 20 of the 1999 Measure.
86. The Group accepted that a full inspection could be expensive and time consuming and that to require a full inspection to be carried out every five years might not take adequate account of the length of planning and implementation for some cathedral programmes of work.
87. **The Group concluded that it was vital that a new architect should carry out a full inspection and make a report within two years of appointment.**
88. The Group considered that thereafter such a programme of regular inspection and reporting was required as would ensure that problems were discovered before they became too serious or expensive to repair: the scale of these inspections could be decided by the Chapter in consultation with the architect. **The Group concluded that an appropriate formula would be to require the architect, after the full inspection following his or her appointment, to carry out subsequently such inspection on a quinquennial basis as were necessary for the architect to fulfil the requirement under section 14(1) for a report on what works were necessary.**
89. **The Group considered that the architect should also be required to make an annual summary report to the Chapter on works carried out in the preceding year and on progress with meeting the programme set out in the quinquennial report. The Group also recommended that section 20 of the 1999 Measure**

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- should be amended so as to apply the same obligation to the “close architect” (or surveyor) who is responsible for inspections and reports in relation to property other than the cathedral church under that section.
90. The Group considered a recommendation to co-ordinate cathedral inspections with the inspections required under section 20 of the 1999 Measure for other cathedral property. However, the Group concluded that this proposal, although desirable, would not be achievable in practice.
91. **The Group considered that, similarly, the cathedral archaeologist should be required to prepare a strategic report on the archaeology of the cathedral and precinct within two years of his or her appointment. This would identify broad issues and include recommendations for addressing them, as well as informing the cathedral archaeologist's subsequent contributions to the quinquennial report process. It was important that the cathedral archaeologist should also be required to prepare an annual summary report to the Chapter, independently of the cathedral architect's annual report, and covering archaeological aspects of works carried out or in prospect. This report could be presented to the Chapter in conjunction with the architect's annual report and, as a matter of good practice, the Group recommended that in all their reporting activities the architect and archaeologist should collaborate over any recommendations that impacted on both their areas of expertise.**
92. **It was agreed that greater clarity was needed in sub-section (2) as to what was expected in terms of record keeping. The importance of a permanent record was accepted, as well as the desirability of linking the process of record keeping to the provisions of sub-section (1) and the architect's inspection and report and of maintaining some degree of practical flexibility. It was agreed that the cathedral architect, the “close architect” under the 1999 Measure (if a different person) and the archaeological consultant should, in their annual summary report to the Chapter, include recommendations as to all those works carried out in the previous year that in their opinion should be the subject of a permanent record. The CFCE should provide advice on the form of such records in consultation with the appropriate professional bodies. The quinquennial report under section 14(1) should then list those records which were**

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**made during the quinquennium of works that had been carried out.**

### **Section 15**

*This section applies where the Chapter proposes to make an application for listed building or scheduled monument consent for a building or monument within the precinct, and requires the cathedral administrator to send a notice of this to the CFCE stating by what date representations can be made about the proposal. Further details are prescribed by Rules.*

93. See the Group's proposals in Part B of this Report (paragraphs 134 to 148).

### **Section 16**

*Section 16 originally provided for the appointment of the Cathedrals (Rules) Committee, gave that committee the power to make rules that it considered necessary or desirable for giving effect to the Measure, and provided for the rules to be laid before the General Synod for approval and to be subject to the “negative resolution” procedure in both Houses of Parliament. It was repealed by the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, which established a Rule Committee, which has power to make rules for carrying into effect that Measure, the Measure and some other legislation.*

94. **The Group considered that the replacement of section 16 by the 1991 Measure had left an inadequate mechanism for dealing with Rules under the Measure and agreed that provision needed to be made, in consultation with the Association of English Cathedrals, for a committee with appropriate experience and expertise in cathedral matters.**

### **Section 17**

*Section 17 provides that nothing in the Measure shall dispense with any consent or approval required for any action by a Chapter by or under the constitution or statutes of the cathedral.*

95. The Group did not propose any change to this section.

### **Section 18**

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*Under this section the Archbishops' Council may, on a petition from the Chapter of a parish church cathedral and provided certain other requirements are satisfied, order that the Measure is not to apply to that cathedral and that it is to be subject to the faculty jurisdiction of the consistory court. The order requires the approval of the General Synod and is subject to the “negative resolution” procedure in both Houses of Parliament. The definition of “parish church cathedral” for this purpose was amended by the 1999 Measure and now covers any cathedral which, immediately before the 1999 Measure came into force in relation to it, did not have a corporate body known as “the dean and chapter”; thus it excludes some cathedrals which or part of which are parish churches.*

96. **The Group agreed that this whole section was redundant. It had never been used nor had any cathedral ever raised the possibility of using it. The Group therefore agreed that the section should be repealed.**

### **Section 19**

*Section 19 provides that all notices to be given under the Measure are to be in writing and be in the prescribed form.*

97. The Group did not consider that any change was needed to this provision.

### **Section 20**

*Section 20 deals with interpretation, and defines a number of expressions used in the Measure.*

98. The Group noted the area of ambiguity surrounding what falls within the terms “fabric” and “building” in the Measure. The general understanding was that fabric included anything that was either fixed to the building (such as fixed monuments or stained glass) or which was permanently situated in the building and, although free-standing, was not easily movable by reason of its construction or weight. However, it was not always easy to decide whether something came within those descriptions. Moreover, the Measure used the term “fabric” in some contexts but used other terms, notably “building”, or simply referred to “the cathedral church”, in others. This would tend to give rise to the inference that the different terms used had different meanings, whereas the Group

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- considered that in many if not all cases they were intended to mean the same thing.
99. **The Group agreed that these differences in terminology within the Measure should be eliminated, except where a difference in meaning was intended, by substituting a single term, and that this should be the word “fabric”, which would where appropriate replace references to the “building”. To avoid the problem of ambiguity, the word “fabric” should be defined in section 20, and the definition should take in elements of the existing definition of “building” in section 20(1) and section 20(2), so that it included the cathedral building and any part of it, and any object or structure permanently situated in it.**
  100. **The Group also agreed that specific amendments should be made throughout the Measure to replace the term “the administrative body” with “the Chapter”. This was on the basis that by the time the amendment was enacted all the cathedrals would have new constitutions and statutes under the 1999 Measure. Similarly, where the Measure referred to ownership, possession or custody of property, it should also refer to the corporate body established under the 1999 Measure as holding the title or rights to the object. (See paragraph 27 above.) Although the 1999 Measure provided for references to, for example, the administrative body to be converted as necessary in the light of the new scheme of governance for cathedrals, the Group agreed that, as the 1990 Measure was being revised in any case, it was clearer and more convenient to make express amendments to the terminology of the 1990 Measure to reflect the changes made by the 1999 Measure.**
  101. **At the same time, the Group agreed that throughout the Measure and in the interpretation section (section 20) the words “the chapter clerk” should be replaced by the words “the administrator of the cathedral”, in line with section 9(1)(e) of the 1999 Measure. It was further agreed that the existing wording “by whatever name called” in the interpretation section should be retained, to allow for the variations between individual cathedrals in the titles given to this office (as was expressly permitted by section 11(a) of the 1999 Measure).**
  102. **Apart from the changes recommended in the paragraphs above and such amendments as were consequential on other recommendations**

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in this report or on legislation passed since 1990, the Group did not consider that section 20 required alteration.

### **Section 21**

*This section provides for the short title of the Measure and its commencement.*

103. The Group did not see any need for this section to be amended.

### **Schedules 1 and 2**

*Schedule 1 deals with the membership of the CFCE, the filling of casual vacancies, and the committees, secretary and proceedings of the CFCE. Schedule 2 provides for the membership of FACs, the filling of casual vacancies and the FACs' procedure.*

104. The Group noted that dual membership of the CFCE and one or more FACs was possible under the Measure, and considered whether this could be perceived as creating a conflict of interest. There was an argument in favour of allowing dual membership as a means of increasing communication between the CFCE and FACs, though there might sometimes be a potential for misunderstanding: for instance through a CFCE member on an FAC being seen to “speak for” the CFCE and vice versa.

105. Nevertheless, the Group did not favour changing the current permissive arrangements that allowed for dual membership. It agreed that to be over prescriptive could prevent the use of available and experienced people, and noted that as a matter of good practice the CFCE never proposed one of its own members as an FAC member (although this did not exclude such a proposal from a Chapter).

106. The Group considered that, in general, any provision on the conduct of CFCE meetings would need to be dealt with by the Rules. **However it agreed that in the case of a appeal to the CFCE under section 9 of the Measure, any member of the CFCE who was also a member of the FAC in question should not take part in the CFCE's deliberations on that appeal.** The Group agreed that such an appeal to the CFCE against a decision of an FAC was a different situation from the consideration by the CFCE of a new application. A CFCE member who was a member of the FAC of the

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cathedral in question would necessarily have a conflict of interest in the first situation and should be required to withdraw from the CFCE meeting. In the second situation there would be no automatic conflict of interest and the Group agreed that it would be inappropriate to legislate on the matter; it was better left to the CFCE to regulate its own business as appropriate, on the basis that if, in the particular circumstances, there was a conflict of interest, the member concerned would need to disclose this and withdraw.

### *Schedule 1*

107. The Group considered proposals for possible amendments to the constitution of the CFCE. It was recognised that the CFCE was in a unique position in comparison with other synodical bodies because of the judicial nature of its main function under the Measure (determining applications made to it for approval). It therefore needed to be and be seen to be independent and impartial and to possess the knowledge and expertise required to fulfil its primary function.
108. The Group accepted that it was healthy for the CFCE to have a five-year injection of newly appointed members, as could happen under the current provisions, rather than moving to a system involving a rolling programme of appointment of new appointees. This gave the CFCE the valuable opportunity to re-think its approach to its work.
109. **It was agreed, however, that two five-year terms was the maximum period that any appointed member should serve, removing the discretion currently given to the Archbishops to permit the re-appointment of a member, in exceptional circumstances, for a further term or further terms. Nevertheless, the Group agreed that if a member were appointed or elected to fill a casual vacancy part way through a quinquennium, then the Archbishops should retain the discretion to direct that he or she should be eligible to be re-appointed for a third term.**
110. A separate issue was whether those members elected by the General Synod should be under the same restriction in relation to their standing for re-election for a third time as applied to appointed member in relation to re-appointment. **The Group agreed that consistent rules were required on eligibility to stand for re-**

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- election on the one hand and on eligibility for re-appointment on the other, so that all CFCE members were treated equally. Thus the provisions on appointed members (including the Archbishops' discretion in the case of a person originally elected to fill a casual vacancy) should also apply to elected members.**
111. Whereas the Chairman and Vice-Chairman were appointed for a term of office starting at the beginning of each quinquennium, this did not inhibit the existing practice of the Chairman resigning in the middle of a quinquennium and a new Chairman being appointed for the remainder of that term (with an expectation of renewal at the beginning of the next quinquennium). This was an arrangement that provided continuity. The Group, however, did not see any need to change the legislation to accommodate this practice.
  112. **The Group agreed that a change was needed to the start date of the term of office for CFCE members. This was currently 1st March, which created timetable difficulties for General Synod staff running the re-appointment process at the beginning of a new quinquennium. The Group accepted that the CFCE should be brought into line with other Boards and Councils with a start date of 1st May. This would provide sufficient time for elections to be held, given the other pressures on staff in the period immediately following the election of a new Synod.**
  113. **The Group noted that General Synod members elected to the CFCE would cease to be members of the CFCE if they ceased to be members of the Synod. This meant that they would lose their places on the CFCE if, at a general election the Synod, they either did not stand for re-election or were not re-elected. The Group recognised that if several members fell into this category it would leave a serious gap in the CFCE's membership in the period between the general election to the Synod and the following 1st May (see paragraph 112 above). The Group therefore recommended that Schedule 1 should be amended to give the Appointments Committee a discretionary power to re-appoint all or any of the members in that position to the CFCE until the end of its quinquennium.**
  114. **The Group also agreed that, for the avoidance of doubt, the Measure should make it clear that a person who was appointed (as opposed to being elected by the Synod) as a member of the**

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- CFCE, and who happened to be a member of the General Synod at that time, should not cease to be a member of the CFCE on ceasing to be a member of the Synod.**
115. The Group agreed that the current provision for the election of five members of the CFCE (including one member of a Chapter) by the General Synod from among its members should remain without amendment. There was no evidence to show that this arrangement was in any way deficient in producing the membership needed on the CFCE and although a move towards a mixture of election and appointment had been suggested to the Group there had been negligible support for it in the response to the consultation process.
116. The Group agreed that no additional representation of professional bodies on the CFCE was required, as it was satisfied that adequate representation was currently provided. The Group also noted that there was no evidence of any widespread demand for an architect to be appointed to the staff of the CFCE.
117. As regards the liturgical concerns that were raised in some of the submissions to it, the Group recognised the importance of liturgical considerations in deciding on proposals for alteration and took the view that they were adequately taken into account at present. Only permanent alterations intended to meet liturgical requirements were referred to the CFCE. The Group felt the level of liturgical expertise on the CFCE was sufficient, given that the special knowledge which the members appointed by the Archbishops under paragraph 3(g) of Schedule 1 to the Measure were required to possess between them included special knowledge of liturgy (including church music), and that two of those members were appointed (under paragraph 3(g)(v)) after consultation with the chairman of the Liturgical Commission.
118. **However, the Group agreed to recommend the following amendments to paragraph 3 of the Schedule:-**
- (i) **the introductory section of sub-paragraph (g) (relating to the range of expertise that should be included within that part of the CFCE's membership) should cover the whole of sub-paragraphs (b) to (g);**

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- (ii) **sub-paragraph (g) (iii), which provides for a member to be appointed after consultation with the Chairman of the Royal Fine Art Commission, should be deleted as this Commission had ceased to exist;**
- (iii) **sub-paragraph (c) should be amended to provide for the Council for the Care of Churches to nominate three members, of whom two should be from among members of the Council or a committee of the Council;**
- (iv) **the requirement to consult with, among others, the President of the Royal Institute of British Architects should be deleted from sub-paragraph (e), as consultation with the President of the Institute was already required under sub-paragraph (d) and the Group did not accept that the requirement to consult the same person on two sets of appointments was justified;**
- (v) **sub-paragraph (e) should be divided to provide for an architect or chartered building surveyor experienced in the conservation of historic buildings to be appointed after consultation with the President of the Ecclesiastical Architects and Surveyors Association; and for a chartered engineer with experience of the care of historic buildings to be appointed after consultation with the Engineers' Institutions named in the sub-paragraph.**

119. The Group did not accept that the CFCE's minutes should be made more widely available. **However, it did take the view that the CFCE's Annual Report should be more extensive, to be**

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- produced perhaps in parallel or in conjunction with that for the Council for the Care of Churches. Such a publication could be viewed as the ecclesiastical equivalent to English Heritage's Annual Report and would give the wider Church a clearer view of what was being done in the field of care and use of cathedrals and churches. It should not be a statutory requirement that this report be delivered to any particular body or office-holder; rather, it should be used flexibly with cathedrals and other interested parties as a tool for giving an account of the work of the CFCE.
120. **The Group agreed that, for the avoidance of doubt, a provision should be added to Schedule 1 under which decisions of the CFCE were to be reached by a majority of members present and voting, with the Chairman having a second or casting vote.**
121. The Group considered the issue of public access to the deliberations of the CFCE for FAC members, applicants and objectors as well as the wider public or the press. The current practice was for those applicants and FAC members (if any) attending a meeting of the CFCE to make submissions, followed by a discussion with members of the CFCE, after which the applicants and FAC members withdrew before the CFCE reached its decision. **However, the CFCE's position was that it would be open to a review of this pattern of conducting its business, and the Group agreed that such a review should take place as part of the reconsideration of the Care of Cathedrals Rules 1990 (see paragraph 94 above).**
122. A further aspect of the public access consideration was the need to make paragraph 16 of Schedule 1 more workable. This provision currently gave the CFCE power to hold public hearings and was difficult to use because the power was conferred on the CFCE as a whole, and therefore required a quorum of the CFCE to hold such a hearing. **The Group agreed that the paragraph should be amended to allow the CFCE to appoint a representative number of members to hold a public hearing and report back to the full CFCE.** This provision would not be a substitute for the CFCE holding more informal meetings with the public, falling short of a formal public hearing, if it felt this was appropriate, as for instance when a delegation made a site visit.

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### Schedule 2

123. The Group was aware of the difficulties encountered by some cathedrals in finding suitable people to serve on their FACs, and it was therefore reluctant to add any further restrictions to those already in force in relation to FAC membership, such as limiting the length of time members could serve. **However, it was agreed that paragraph 1(a) of Schedule 2 should be amended to delete the words “who are in Holy Orders”, as after the implementation of the 1999 Measure the Chapter would in all cases include lay people, and the Group considered that all the members of the Chapter (but not the Council) should be excluded from being members of the FAC.**
124. **The Group also agreed that an amendment was needed in paragraph 9 with regard to the filling of a casual vacancy on an FAC. This would make it clear that the process of consultation that was required for an initial appointment also applied to the filling of a casual vacancy – namely, the Chapter appointing after consultation with the CFCE and vice versa.**
125. The Group did not accept the proposition which was put to it that the National Amenity Societies should have a nominated representative on the FAC. The Group considered that the nature of the FAC would fundamentally change if it moved towards being a nominated body. Under the current Measure, individuals could be appointed who had interests in other bodies, and it was open to the CFCE to consult English Heritage and the National Amenity Societies about possible candidates. However, it should be recognised that the CFCE would not appoint “representatives” of these bodies and that all the members of FACs appointed would speak and reach decisions as individuals and members of the FAC and not as representatives of any other body.
126. The Group did not accept a submission that the Measure should require local planning authorities to be consulted before members were appointed to the FAC. The Group took the view that good communication and consultation between cathedrals and local authorities were very important, but that it might not always be appropriate to have a local authority nominee on the FAC, since this might result in conflicts of interest in respect of proposals where the local planning authority had a planning role distinct from that of the FAC.

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127. The Group agreed that the FAC should retain the power under paragraph 2 of Schedule 2 to appoint its own chairman from among its members.
128. The Group rejected a submission that the FAC chairman should be someone drawn from outside the cathedral community as unrealistic and positively undesirable. Such an approach could be seen as “secularisation” and would not be possible to implement, as the FAC chairman would qualify as a member of the “cathedral community” as defined by the 1999 Measure by virtue of serving as such.
129. **The Group agreed that the current provision in paragraph 3 of Schedule 2 which gave the dean or provost and the residentiary canons the right to attend and speak at, but not to vote at, meetings of the FAC needed revision in the light of the provision in the 1999 Measure for the Chapter of every cathedral to include lay members, and possibly also clerical members other than the residentiary canons. In the Group’s view they should be treated in the same way as the residentiary canons in relation to attendance at meetings of the FAC. The Group also appreciated that it was important that the number of Chapter members attending FAC meetings should not be so large that the dynamics of the meeting were distorted or members of the FAC felt under pressure, thus compromising the FAC’s independence. The Group agreed that the dean should continue to be entitled to attend, and to speak but not to vote, and that such other members of the Chapter as the Chapter considered appropriate, after consulting the FAC, should have the same right.**
130. The Group noted that there was a potential problem of conflict of interest if the secretary to the FAC, who under paragraph 7 of Schedule 2 was appointed by the FAC itself, was also a member of Chapter (especially if the Chapter member in question was also the cathedral administrator, which was a possibility under section 4(3) of the 1999 Measure). **The Group therefore agreed that any member of the Chapter should be disqualified from also being FAC secretary.** The Group decided not to recommend a further provision disqualifying any employee of the Cathedral from being the FAC secretary, in view of the opposition many cathedrals had expressed to this proposal on the grounds that it was seen as over

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prescriptive. **At the same time, the Group recommended that as a matter of good practice the FAC should consider any issues of potential conflict of interests before appointing its secretary.**

131. The Group was opposed to giving the FAC power to delegate its responsibilities to sub-committees. In the Group's view it was important that the FAC as a whole should work as envisaged by the Measure. Consultants or other experts invited to advise on particular issues, whether individually or as a committee, should always report back to the full FAC on any matter where the FAC's views or decision were required.
132. The Group recognised that the provisions regarding the size of the quorum in paragraph 10 of Schedule 2 had caused problems for some FACs. There was, however, some evidence that this problem was less widespread than when the Measure first came into effect, by virtue of FACs becoming more effective at conducting their business. The Group was opposed to proxy votes as it saw these as acting against the spirit of the Measure, which called for full discussion and exploration of issues *before* reaching a decision. The Group therefore decided that the provisions on the quorum should remain unaltered. In demonstrating that the controls, which formed the basis for the ecclesiastical exemption for cathedrals, were thorough and effective, it was important to ensure that the FAC met as a body and did not determine applications outside meetings of the full committee. To this end, it was also important that members were aware of their responsibilities on joining FACs, and the Group felt that relaxing the quorum requirements would not assist in these tasks.
133. The Group decided against a submission that the Measure should require FAC minutes and papers to be sent to English Heritage and the National Amenity Societies, on the grounds that this would place an unwarranted extra burden on FAC secretaries.

### **Part B – Secular legislation and control**

134. In respect of the entire relationship between the Measure and secular controls over planning, listed buildings and scheduled monuments, the Group considered that the removal of "dual control" was desirable in principle, but regretfully accepted that in the short to medium term the continuance of some measure of "dual control" was unavoidable. This was because, on the one hand, the

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system under the Measure must have its own coherence and integrity - it should not be merely a stop-gap - while, on the other hand, the secular controls varied in scope and operated at different levels, so that it would not be possible at present to draw neat boundaries between the two systems without legislative changes on *both* sides. In the longer term, however, the Group considered that the removal of “dual control” in respect of listed building and scheduled monument controls should be the objective. Meanwhile, much could be achieved by common sense and good practice, and by developing a better understanding between those operating the secular and cathedral systems.

135. In summary of the overall position (set out in detail in the following paragraphs), the Group agreed the following principles:

- the current provisions relating to the CFCE’s involvement in proposals that required planning permission should be retained as being in the best interests of cathedrals;
- in the long term the strategic aim should be to remove dual control in respect of listed building and scheduled monument controls;
- **in the short term the only real overlap in relation to listed building control was in the area of archaeology;**
- **in relation to scheduled monument control, there was a short term issue over scheduling underneath cathedrals, and a longer term issue about whether the preferred national strategy for the archaeological care of cathedrals might be through the holistic procedures of the Measure rather than scheduling.**

### *Planning Permission*

136. The Group considered evidence that a number of important recent cases had raised questions about the status of representations made by the CFCE within the planning process. These related both to development proposals put forward by the Chapter, which the CFCE had formally approved and then supported by written representations to the planning authority, and also to development proposals by third parties relating to sites outside the cathedral precinct but having a major impact on the setting of the cathedral,

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where the CFCE, having consulted closely with the Chapter, had made representations to the planning authority.

137. **In order to enhance the positive value of dual control in the case of planning permission (namely, that it provided the occasion for major schemes to be scrutinised by the expert national body on cathedrals, and that this could inform the planning process in the best interest of cathedrals), the Group agreed that it was important to raise the profile of the CFCE's advice in the eyes of local planning authorities and that this could be achieved, at any rate in the first instance, through the non-statutory route favoured by DETR staff in discussions with officers of the Group. The Group therefore agreed to request the DETR to consider a proposal that would involve the DETR issuing non-statutory guidance to local planning authorities, advising them to notify the CFCE (as the relevant national statutory body) of any application for planning permission that materially affected the setting of a cathedral, and to have regard to any representations made by the CFCE. The CFCE for its part would consult with the cathedral Chapter before making any representations and provide further advice to cathedrals.**
  
138. **The Group agreed that, in view of the scale and impact of some developments in cathedral precincts, the present position as regards the interrelationship between planning permission and approval under the Measure should continue, so that the requirement for a Chapter to obtain planning permission would not remove the need for any approval required under the Measure. However, there might be marginal cases where the CFCE decided that it was not necessary to insist on approval under the Measure in order to safeguard the architectural, archaeological, artistic or historic character of the cathedral or its ancillary buildings, or the setting of the cathedral, or any archaeological remains within the precinct. To meet this situation, the CFCE should be given a discretionary power to direct that where an application for planning permission was being made, and where the CFCE was satisfied that the local planning authority was giving full consideration to the issues that would normally be dealt with under the Measure, the Chapter need not also submit an application for approval to the CFCE itself.**

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### *Listed Building Control*

139. By the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, the Secretary of State established (by issuing a series of plans, one for each cathedral) the extent of cathedrals' exemption from listed building control. However, two issues remained.
140. Cathedrals had expressed concern that no provision existed to amend the plans referred to in the 1994 Order on any sort of regular basis and thus adapt the extent of the exemption so far as appropriate to take account of properties which the cathedral purchased after the date when the 1994 Order was made or which were found to be in the cathedral's ownership after that date. The Group recognised that any change in this situation could only be achieved by a further Order, and that there might well be technical legal difficulties in the way of giving the Secretary of State a general power to amend the plans from time to time without further specific Orders.
141. Whereas it was clear under the Order that (with some exceptions) listed building control applied to listed structures within the cathedral precinct anywhere outside the delimited area of ecclesiastical exemption, there were questions as to the degree of *archaeological* protection afforded to the sites and structures of such buildings by the listed building consent procedures as operated by some local planning authorities. **The Group considered that it was important to maintain the holistic overview of the protection of archaeological remains within the precinct currently exercised by the CFCE and agreed that the need for approval under the Measure should not be removed *ipso facto* by an application for listed building consent. Rather, the Group agreed that the best way forward would again be for the CFCE to have a discretionary power to direct that where an application for listed building consent was being made, a separate application to the CFCE need not be made if the CFCE was satisfied that full consideration was being given to archaeological issues by the local planning authority. It was noted that this principle could also be applied to scheduled monument consent cases.**
142. **Furthermore, the Group agreed that it was desirable for Chapters, as a matter of good practice, to include in leases to**

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**their tenants an obligation on the tenant to consider archaeological matters before seeking permission to carry out work. The Group saw this as one further way in which archaeological protection could be strengthened within the Church and which, in its turn, could over time contribute to the end of dual control.**

### **Scheduled Monument Consent**

143. The Group noted that the Ancient Monuments and Archaeological Areas Act 1979 provided that an ecclesiastical building which is for the time being used for ecclesiastical purposes may not be scheduled as an ancient monument, so that any proposed work to such a building does not require scheduled monument consent. This did not preclude the scheduling of clearly separate monuments lying beneath cathedrals, or of other monuments in the precinct. However, it was in practice difficult to distinguish a scheduled monument underlying a cathedral from the foundations and sub-floor levels of the cathedral itself (which could not be scheduled). The Group considered that it was not good practice to schedule monuments beneath cathedrals (as had happened in one or two cases) when the effect of this had been to require Chapters to apply for scheduled monument consent in respect of works to the cathedral fabric itself, at or below ground level.
144. The Group noted that paragraph 4.19 of a consultation paper entitled *Protecting Our Heritage*, which was published by the Department of National Heritage in May 1996, stated that “the Government thinks it is inappropriate and unnecessary to subject the Church of England authorities to dual controls. Views are therefore invited on the possibility of removing the need for Church of England authorities to seek scheduled monument consent for works which would affect a scheduled monument lying beneath a cathedral or church which is in use for ecclesiastical purposes.” Under this proposal, the Secretary of State would retain the power to schedule archaeological remains beneath cathedrals and within their precincts, but there would be an exemption from the need for scheduled monument consent for proposed works affecting such remains. It was not proposed at the time that this exemption would extend to other scheduled ancient monuments within a precinct.
145. **Having examined the various options that might be pursued, the Group agreed that it would be best to work towards a**

permanent legislative solution to the issue, along the general lines indicated in paragraph 4.19 of *Protecting our Heritage*. This would make it possible for the issue of underlying sites as well as the issue of dual control in the wider precinct to be resolved, and would apply to non-cathedral churches as well as cathedrals. It was envisaged that the Secretary of State would need to agree what area should be covered by this exemption in the case of each cathedral (i.e. in a manner comparable to the provisions of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, which dealt with similar matters in relation to the exemption from listed building control – see paragraph 139 above).

146. At the meeting referred to in paragraph 17 above, officials of the DCMS and the DETR had invited the Group to submit a draft amendment to the 1979 Act to give effect to any proposals the Group wished to put forward, so that they could be considered for incorporation in any new Bill the DCMS might bring to Parliament. **In view of the fact that the DCMS might need to bring forward a fresh Bill on heritage matters immediately after the General Election, the Group agreed that Standing Counsel to the General Synod should be asked to draft an amendment along the lines set out in paragraph 144 above, for consideration by members. If the Group was content with it, it should be sent to the DCMS so as to be readily available for possible inclusion in such a Bill.**
147. At the same time, the Group considered that future discussion of the extent of any exemption should not necessarily be confined to what was proposed in 1996; rather, it should take account of how the strong archaeological safeguards provided by the Measure related to the Government's current strategy for archaeological protection in urban areas.
148. In any case, although the Group would ask for the proposal outlined in paragraph 144 above to be implemented as soon as opportunity offered, members recognised that it was unlikely to be achieved in the short term. In the meantime, the Group agreed that it was important to develop a practical understanding with the DCMS and English Heritage on a non-statutory basis, first as to which were the ecclesiastical buildings in ecclesiastical use (which themselves were exempt from scheduling) in the case of each cathedral and, second, that no

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further scheduling should take place underneath those buildings.

### *The Treasure Act*

149. The Group noted that the CFCE had consulted with all cathedrals in 1997 about the exemption, within agreed limits, offered by the Government from the *Treasure Act 1996*. Discussions were continuing with DCMS and its legal advisers about the wording of the relevant Order, which would relate both to cathedrals and to other churches. **The Group agreed that it would be necessary to make certain minor amendments to the Measure to tie in with the provisions of the Order and the DCMS's requirements. The new provisions would need to ensure that the CFCE was notified of the discovery of what would otherwise be items of Treasure; that such items were identified in the cathedral inventory; that any application to for approval to dispose of such an item was made to the CFCE; and that in the event of a proposed disposal a prior option to purchase was offered to the British Museum (or another museum indicated by the latter) together with a mechanism for agreeing a valuation.**

### *Disused Burial Grounds*

150. The Group noted that consecrated disused burial grounds of non-parish church cathedrals were in a unique legal position among consecrated and other disused burial grounds in being unable to avail themselves of any procedure for abating the effects of the *Disused Burial Grounds Act 1884* (which makes it illegal to erect any buildings on any disused burial ground except for the purpose of enlarging a church or other place of worship). This position had become even more anomalous since the 1999 Measure had been passed, as it abolished most of the legal differences between dean and chapter and parish church cathedrals. Up till now (and still) parish church cathedrals, as defined prior to the 1999 Measure, have been able to avail of the provisions of the Pastoral Measure with respect to declaring part of a burial ground redundant. **The Group agreed that this issue needed to be pursued, with a view to bringing the legislation as it applied to consecrated but disused burial grounds of cathedrals into line with that which applied to other categories of disused burial grounds belonging to churches and other religious bodies, and the Group considered**

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**that the best vehicle for seeking to bring this about was the current Review of the Pastoral and Dioceses Measures.**

### **Part C - The Royal Peculiars and other non-cathedral churches**

151. The Group noted early in its deliberations that the Care of Places of Worship Measure 1999, once it came into force, would allow those responsible for Peculiars and certain other places of worship which were not at present within the faculty jurisdiction to bring them within that jurisdiction. This would enable them, if the buildings were listed buildings or within conservation areas, to retain the so-called “ecclesiastical exemption” from the secular listed building and conservation area controls on a permanent basis.
152. The Group also noted that an additional possibility had been raised during work on the Care of Places of Worship Measure. This had been that those responsible for a very few major places of worship that might be regarded as analogous to cathedrals might be given the option to come within the provisions of the Care of Cathedrals Measure 1990 (rather than the faculty jurisdiction). The Group noted that this option had been offered to Christ Church, Oxford and also to the Dean and Chapter bodies of Westminster Abbey and St George’s Chapel, Windsor, but that they had not wished to pursue it. As a result, no such provision had been included in the Care of Places of Worship Measure.
153. When the Group originally considered these issues, it was aware that the position of Westminster Abbey and St George’s Chapel, Windsor was likely to be considered again by the Royal Peculiars Review Group, then meeting under the chairmanship of Professor Averil Cameron. The Group took the view that the issues were beyond its own immediate terms of reference and agreed at that stage not to pursue them further itself.
154. The Group subsequently received the Report of the Royal Peculiars Review Group, which was published on 5th March 2001, and considered chapter 7, which contained the detailed recommendations of the Review Group regarding the care of the fabric of Westminster Abbey and St George's Chapel, Windsor. The Group noted the conclusion of the Review Group that those two Peculiars’ own schemes for approving alterations, as negotiated with the DCMS, were not satisfactory and that the two Peculiars should come within the Care of Cathedrals Measure.

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155. **The Group agreed that, if required, the Care of Cathedrals Measure (and the 1994 Supplementary Provisions Measure) could in principle be adapted to cover these two Peculiars in the way suggested by the Cameron Group, although that would clearly involve some modification of the provisions applicable to cathedrals, and in particular to the provisions of the Supplementary Provisions Measure. In the Group’s view, the necessary legislation could in principle be combined with the provisions to give effect to the Group’s own proposals in a single draft Measure. However, the Group did not feel that it could make any firm recommendation as to whether the Cameron Group’s proposals should be implemented without knowing the reaction of the interested parties, including the Deans and Chapters of the two Peculiars themselves and the DCMS. It was likely that such reactions would not be made public for some little time.**
156. **The Group noted, however, that if Westminster Abbey and St George’s Chapel, Windsor did come within the Measure, then the consequent increase in the workload placed on the CFCE would need to be appropriately resourced.**
157. The Group also considered a suggestion that it should be possible to bring other “large churches” within the provisions of the Measure. It was noted that parish churches that happened to be of cathedral-like scale in their buildings nonetheless had their own particular pastoral concerns and structures, which needed to be addressed separately from the specific concerns of cathedrals as the seat of the bishop and a centre of worship and mission for the diocese. In addition, such parish churches did not have the resources of a cathedral administration behind them. The Group agreed that no sufficient case had been made for it to consider further the issue of extending the scope of the Measure to such “large” parish churches.

### **Part D – General matters**

#### **Works departments**

158. **The Group agreed that the importance of the works department of a cathedral and its proper management needed to be more fully recognised and that, while this area was not a**

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**matter for legislation, it was one where guidance on good practice was especially important.**

### *Archaeological finds*

159. The Group agreed that the proper curation of archaeological finds was an issue that required further attention. Problems associated with the deposit of such artefacts (together with site records) in museums were covered in principle by section 2(1)(b), but required clarification in practice, and there were also questions regarding the ownership of finds. **The Group agreed that the CFCE should take this further in conjunction with the Association of Diocesan and Cathedral Archaeologists.**

160. There was also an issue of additional costs for the study and conservation of finds arising after archaeological works have begun, and whether these costs should be borne solely by the cathedral or whether English Heritage could meet some of the cost. The Group noted that it was a reasonable expectation that when a cathedral had undertaken a development that required archaeological work, the proper treatment of archaeological finds was an essential part of that work. The question whether grant aid might be available from English Heritage towards cathedral archaeological projects would have to be addressed to that body, but the Group noted the concern that English Heritage itself was under financial constraints.

### *Grant Aid*

161. The Group wished clearly to acknowledge the generous assistance given towards the repair of cathedrals over the previous ten years from public funding administered by English Heritage, and also the important contribution made by English Heritage through its technical advice and its participation in joint projects with the CFCE. However, the Group was aware that, faced with current financial constraints, English Heritage was proposing a review of its grant programme to cathedrals. **The Group agreed that, while awaiting the outcome of this review, it wished strongly to emphasise its view that the continuation of Government assistance towards the repair of historic cathedral fabric was of fundamental importance.**

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### *Disabled access*

162. **The Group agreed that this issue should continue to be dealt with by the working party of the CFCE which was currently examining the issue of disabled access to cathedrals and churches and the wider question of how cathedrals and churches should meet the needs of disabled people.** The working party was preparing suitable guidance material in this important area, and was now consulting on a draft which would be available on the Church of England Web Site in the near future.

### *Care of Cathedrals (Supplementary Provisions) Measure 1994*

163. The Group agreed to make no recommendations for amendments to the Care of Cathedrals (Supplementary Provisions) Measure 1994, which provides an enforcement mechanism for section 2 of the Measure. In reaching this decision, the Group noted that there was no experience of the 1994 Measure being used in practice and no evidence that it required amendment. In the light of that, the Group decided against specific amendments to the 1994 Measure of the kind it was proposing for the Measure, to bring the terminology in line with that in the 1999 Measure and, in particular, to replace “the administrative body” with “the Chapter” wherever it occurred; in the Group’s view, in the absence of any other amendments, the provisions of the 1999 Measure which converted these references as necessary should be left to operate (see paragraph 100 above).

### **Part E – The Group's consideration of Chapter 10 of the Report of the Archbishops’ Commission on Cathedrals (*Heritage and Renewal*)**

164. Chapter 10 of the Commission’s Report deals with matters relating to the fabric. The Group considered the whole of the chapter in detail, and the following paragraphs set out its response to the seven recommendations in the chapter, as summarised on page 183 of the Report.

165. ***Recommendation 1 - FACs should be entrusted as high a degree of decision making as is compatible with the terms of the Measure.*** This was fully endorsed by the Group and adopted as one of its guiding principles (see paragraph 8 above), and formed the basis for its consideration of the relationship between FACs and the CFCE (see paragraphs 38 to 43 above). The Group also took particular note of paragraph 16 of Chapter 10, on the importance of providing

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indemnity or insurance cover for members of committees such as FACs.

166. ***Recommendation 2*** – *All interested bodies should collaborate to ensure that there is no unnecessary duality of legislation in fabric and archaeological matters.* The Group accepted that cases where consent was required both under the Measure and under secular legislation (particularly that relating to listed buildings and scheduled monuments) should be kept to a minimum, and staff of the Group engaged in discussion with officials of the DCMS and the DETR with that in view (see paragraphs 17 and 134 to 148 above). However, the Group also recognised that dual control could not be completely eliminated without undermining the objectives of the Measure, and in some cases it would be difficult for the Church to restrict or remove dual control in practice without changes in both Church and secular legislation. The Group accepted that it might be some time before the DCMS and the DETR had the opportunity to bring forward amending legislation for this purpose.
167. **The Group’s conclusion was that some steps could and should be taken in the short term, but that the Church should also adopt a wider long-term strategy, in collaboration with the relevant Government Departments and the amenity bodies, for achieving the goal of eliminating dual control (preferably in relation to all places of worship and not merely cathedrals) so far as was possible without undermining the integrity of the procedures under the Measure (and the faculty jurisdiction) (see paragraphs 134 and 135 above).**
168. ***Recommendation 3*** - *Cathedrals should as a matter of priority establish clear management structures and define the roles of those principally concerned in the care and conservation of the fabric.* The Group noted (as pointed out by English Heritage) that the new cathedral constitutions and statutes drawn up under the 1999 Measure would significantly clarify management structures. **However, it agreed that further progress in ensuring the effective internal management of the structures and procedures established by the Measure would best be achieved through guidance material rather than through legislation. In the Group’s view, this fell within the CFCE’s general duty to give advice, as laid down by section 3(2)(a) of the Measure. In that context, the Group noted the range of guidance material being**

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produced by the CFCE, professional bodies and others, which is listed in Appendix III.

169. *Recommendation 4 – The role and duties of cathedral architect should be defined on the lines proposed in the paper “The Role and Duties of a Cathedral Architect” prepared by the Cathedral Architects’ Association, and the role and duties of cathedral archaeologist should be defined on similar lines. The Group agreed with the recommendation that the duties of both the cathedral architect and the cathedral archaeologist should be better defined. It considered that in general this could be best dealt with by guidance material, prepared by the CFCE in consultation with the relevant professional bodies for cathedral architects and archaeologists, reinforced by the Group’s recommended change to section 3(2) of the Measure to give the CFCE a more specific duty of promoting standards of good practice (see paragraph 35 above). The Group’s recommendations for changes to section 14 of the Measure (see paragraphs 85 to 92 above) would also play a part in providing a clearer definition of the role and duties of the architect and the archaeologist.*
170. *Recommendation 5 – The CFCE must not be under resourced – it performs a national statutory role which is the key to confidence in the operation of the Care of Cathedrals Measure, and of funding via English Heritage. The Group noted this recommendation in the context of cumulative cuts in the CFCE’s staff budget since 1996 (in line with cuts experienced by other synodical bodies) which have left it with a staff nearly 18% less than it had in 1991. The Group considered evidence that during the same period the CFCE’s workload had in fact increased.*
171. The Group was concerned to ensure that the CFCE was adequately resourced because of the importance which it placed on the CFCE functioning efficiently and effectively. **While it was not for the Group to comment directly on the financial allocation to the CFCE, which was a matter for the Archbishops’ Council, the Group agreed that the effectiveness of the Measure in the eyes of cathedrals, the Government, the amenity bodies and other interested parties, and indeed, the continuance of the ecclesiastical exemption in relation to cathedrals, depended on the CFCE being able to fulfil its statutory functions.** In this connection the Group noted that the fact that the CFCE was

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- adequately staffed by professional officers was one of the two reasons why the *Newman Report* on the ecclesiastical exemption had recommended, and the DCMS had accepted, that there was no need for a further automatic Government review of the Church's controls over works to its cathedrals after three years.
172. The Group did not consider that to seek funding for the CFCE directly from cathedrals (say, by way of a fee for applications) was an acceptable alternative to funding by the Archbishops' Council. There were several reasons against this: it could undermine the CFCE's independence or at least give rise to the perception that it was not fully independent and impartial; it ignored the fact that the Measure was only one part of the Church of England's system of controls; and it overlooked the contribution many cathedrals already made to the cost of these arrangements through their contribution to the diocesan quota.
173. ***Recommendation 6*** - *An 'audit of objectives' covering plans of a developmental nature and a fabric report for both cathedral and Close properties should be prepared on a quinquennial basis so that all works can be properly planned and ordered.* English Heritage's submission argued that this objective should be given a higher priority and that a greater effort should be made to implement it. The Group noted that section 20 of the 1999 Measure now provided for professional inspections and reports to the Chapter on all properties other than the cathedral itself which the Chapter was liable to maintain, with recommendations by the person carrying out the inspection along the same lines as were required by section 14(1) of the Measure in relation to the cathedral itself. In addition, the Group was informed that most cathedrals were now working within strategic long term objectives in relation to financial and fabric issues, and noted that one of the implications of sections 3, 4 and 6 of the 1999 Measure would be to extend strategic planning to the cathedral's general direction and mission.
174. On a related issue, the Group noted that conservation plans were becoming well established in the secular world and could prove to be valuable to cathedrals in establishing the wider significance of the cathedral and policies for retaining that significance in any future use or development.
175. Nevertheless, the Group recognised that the place of the audit of objectives or the conservation plan (and how these could relate to

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the longer-term vision of the mission and worship of the cathedral) was still developing in the cathedral context. **The Group agreed, therefore, that it was too early to include provision for them in the Measure and that this recommendation by the Commission was better pursued at present as a matter of guidance on good practice rather than in legislation.** The Group noted that the CFCE and the Association of English Cathedrals were in the process of producing guidance on good practice on the possible use of conservation plans by cathedrals.

176. ***Recommendation 7 - Cathedrals should prepare 'fire safety policy statements' and hold regular fire safety audits.*** The CFCE and English Heritage had already made progress towards implementing this by jointly publishing guidelines for fire safety for cathedrals (details of which are contained in Appendix III). These guidelines recommended that all cathedrals should have a fire safety policy and that a fire safety manual and logbook should be produced. (See also paragraph 35 above). However, the Group was informed that it was the experience of English Heritage that the adoption of these fire safety recommendations by cathedrals was somewhat “ad hoc”. **The Group noted that concern, but took the view that the best way of addressing it and making further progress with the Commission’s recommendation was through advice on good practice rather than through legislation.** Given that the subject of fire safety was already the subject of detailed regulation by secular legislation (the Fire Precautions (Workplace) Regulations), albeit with the object of avoiding death or personal injury rather than damage to the fabric, the Group did not consider it was desirable for Church legislation to lay down further requirements which would either duplicate or appear to be at variance with the existing provisions. However, the Group noted that special issues arose in the application of the Fire Regulations to the fabric of historic buildings, and noted the continuing joint work by the CFCE and English Heritage on the impact of the regulations on cathedrals.
177. **A separate issue noted by the Group was that of disaster recovery planning which, again, the Group agreed should be addressed by advice on good practice.**

**On behalf of the Group**

**Janet Atkinson**

**Chairman**

**23<sup>rd</sup> April 2001**

**SUMMARY OF GENERAL PRINCIPLES AND  
RECOMMENDATIONS**

*The numbers in square brackets refer to the paragraphs of the main Report where full details and background can be found.*

**General Principles**

1. In general the Care of Cathedrals Measure 1990 (“the Measure”) is working effectively, and there is no need to alter its basic principles or structure. [6]
2. There are a number of deficiencies in the detailed provisions of the Measure that need to be addressed, and also some consequential amendments that should be made as a result of the passage of other legislation, such as the Cathedrals Measure 1999 (“the 1999 Measure”). It is assumed that by the time amendments to the 1990 Measure are enacted, all the cathedrals will have new constitutions and statutes under the 1999 Measure. [7]
3. Generally speaking, the current balance of responsibilities between the Cathedrals Fabric Commission for England (“the CFCE”) and the Fabric Advisory Committees (“FACs”) should be maintained. [8]. For areas where some adjustment is needed, and for the relationship between the CFCE and the FACs, see paragraphs 15-21 below.
4. The Measure should not be amended in a way that is unnecessarily prescriptive. Wherever appropriate, guidance on good practice should be preferred to specific new duties imposed by legislation. [9]
5. The financial constraints on the CFCE and the cathedrals and other constraints on resources should be borne in mind when considering the role and functions of the CFCE and the demands placed on it and on cathedrals. [10]
6. In order to reduce the administrative burden on cathedrals, instances of “dual control” (where permission is needed both under the Measure and from secular authorities) should be eliminated in all

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cases where it is possible to do so without frustrating the objectives of the Measure. [11]

### **Recommendations**

#### **Part A – Specific provisions in the Measure**

##### **Section 1**

7. An appropriately worded general provision should be inserted, relating to functions under the Measure and the bodies which have those functions, to emphasise and reinforce the principle of promoting care and conservation. [22]

##### **Sections 2 and 5**

8. Section 2(1)(b) should be expanded to include a specific requirement for approval for conservation work on objects of architectural, archaeological, artistic or historic interest which would materially affect their character as such. [25, 26]
9. Section 2(1)(b) should also be amended so as to apply in cases where the cathedral has or is entitled to possession or custody of an object in the same way as to those where it is the undoubted legal owner. The wording of section 2(1)(b) should be adjusted to take account of the fact that under the 1999 Measure it is the new corporate body established for the cathedral which is the legal owner of the cathedral property, and also to refer to that body in the context of possession or custody. [27]
10. For the avoidance of doubt, section 2(1) should include an express provision that where a person or body other than the Chapter proposes to carry out works of a kind described in section 2(1) and requires the permission of the Chapter, the Chapter must obtain approval under the Measure before giving its consent. As a matter of good practice, any new leases of property within the precinct should require the tenant to obtain the Chapter's consent for proposals within section 2(1) of the Measure. [29]
11. FACs should be given a general power to determine whether a proposal requires approval, and this should appear in the Measure before the present section 5(1). The part of section 5(2) which

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confines it to determinations under the present section 5(1) should be deleted. [31]

### **Sections 3 and 4**

12. The CFCE should continue to keep its guidance material up to date and to consolidate that material where appropriate. [33]
13. Sections 3(2) and 4(2) should be amended to make it clear that the CFCE's and the FACs' duties to provide advice should include giving advice not only in relation to the cathedral church itself but also in relation to the cathedral's ancillary buildings, contents and precinct (including the landscape and natural environment within the precinct). [34]
14. Section 3(2) should also be amended to give the CFCE a specific duty to promote, in consultation with others:-
  - standards of good practice for the care and conservation of cathedrals (including standards on fire safety audits, developing a fire policy statement and carrying out disaster recovery planning);
  - standards on the role and duties of the Cathedral Architect and Cathedral Archaeologist; and
  - standards on the compilation, maintenance and dissemination of information about the architectural, archaeological, artistic and historic interest of cathedrals. [35]

### **Section 6**

15. As a general principle the Measure should continue to provide for as many decisions as are appropriate to be taken by the FACs, who currently deal with the majority of applications under the Measure. However, the CFCE has an important role, which must continue, in dealing with the minority of applications which need its particular expertise and national knowledge. [42]
16. In cases where the application for approval must be made to the CFCE, there should be a more formal process than exists at present for the FAC to inform the CFCE of its views. There should be a statutory requirement for the FAC secretary, on receipt of a notice under section 8(1), to write to the CFCE stating whether the FAC has considered the proposal in question and, if so, what the views of the committee were. [40]

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17. The FAC chairman and secretary should be notified of an impending CFCE visit to the cathedral in relation to an application, and the FAC should then select one or more of its members to meet the CFCE delegation as representatives of the FAC, with a right to speak on the FAC's behalf and represent its views. [41]
18. The CFCE should have a discretionary power to waive its function of determining applications that fall within its statutory jurisdiction in the case of particular “borderline” cases that in its view do not need to be considered at the national level, leaving the application for approval to be made to the FAC. A similar power should exist in relation to classes or descriptions of proposals, subject to prior consultation with English Heritage, the National Amenity Societies and, for proposals within section 2(1)(a), the representatives of local planning authorities. [43 and 44]
19. Section 6(1) should require the application for approval of conservation work on objects designated as of “outstanding” interest to be made to the CFCE. It may also occasionally be appropriate for the CFCE to call in an application in relation to an object which is not designated as “outstanding”. [45 and 46]
20. The phrase “works which would permanently alter the fabric” in section 6(1)(a) already includes repair work which would materially alter the architectural, archaeological, artistic or historic character of the building, so that applications for approval of such work need to be made to the CFCE. However, this should be made clear by an express provision in the Measure, without detracting from the proper responsibilities of FACs in relation to other repairs. [48]
21. The CFCE should provide clear guidance on what types of application need to be made to it rather than the FAC. It is also important for cathedral architects and archaeologists to understand the legal requirements in relation to applications for approval and to advise their clients accordingly. [51]

### *Sections 7 and 8*

22. Where the Chapter makes an application to the FAC for approval of a proposal within section 2(1)(a)(i), it should be required to send to English Heritage and to the National Amenity Societies (or a body appointed jointly by the Societies) copies of public notice displayed

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- under section 7(1). There should not be a requirement for such notices to be accompanied by copies of the full supporting documentation; the amenity bodies should decide, on the basis of the brief project description (see paragraph 23 below), whether to inspect the full details at the place where they are publicly available. [58]
23. All public notices of applications to the FAC or the CFCE which must be displayed under the legislation should be required to include a brief project description, covering the location, extent and nature of the work. This should also be kept as part of the register of applications and be available for other purposes. [57] Ensuring that notices are displayed in a sufficiently prominent place is a matter for Rules and guidance on good practice.[58, 61]
  24. The Chapter, in consultation with the FAC, should make itself aware of local bodies that it would be appropriate to consult in relevant cases. [59]
  25. The CFCE should directly inform the local planning authority of its decision in cases other than those relating solely to objects. [60]
  26. Where the Chapter applies to the CFCE for approval of the sale or other disposal of an outstanding object, the CFCE should have power to seek advice from the Church Commissioners (as an outside and independent body) in evaluating the financial arguments put forward by the cathedral for the proposed disposal, and the Church Commissioners should have power to give such advice. The advice should not extend to the valuation of the object or to any aesthetic or pastoral considerations. [63 and 64]
  27. As a matter of good practice, the cathedral Council should have a full opportunity to make its views on the proposed sale or disposal of an outstanding object under section 3(6)(b) of the 1999 Measure (under which the Council receives and considers the annual budget for the cathedral) at the stage when the initial financial proposals have been formulated, and well before an application for approval is submitted to the CFCE. [65]
  28. For the avoidance of doubt, and to meet the requirements of the DCMS Code of Practice relating to the ecclesiastical exemption, a provision should be added to the Measure requiring the body to whom an application is made to have regard among other matters

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- (including the cathedral's purpose as set out in section 1) to the desirability of preserving the cathedral church and any listed building in the precinct for the time being used for ecclesiastical purposes, together with any features of special architectural, archaeological, artistic or historic interest which they possess, and the desirability of preserving the immediate setting of the cathedral and any archaeological remains within the precinct. This principle should also apply on an appeal. [67]
29. Guidance should be given on the procedure in cases where the CFCE gives a conditional consent, subject to further details or information being supplied and approved. In such cases, the CFCE should retain a discretion as to the extent of any further round of notification to those who were required to be notified of the original application.
  30. A time limit of five years (or some other specified period, if appropriate in the circumstances of a particular case) should apply to any approval given. The approval should lapse if the work is not begun within that period, although it should then be possible to apply for a renewal of the approval. [69]
  31. The cathedral administrator should be required to inform the CFCE or FAC that approved works have been completed, so that the CFCE or FAC can satisfy itself that any conditions had been complied with. [70]
  32. FACs should be required to keep registers of applications that come to them. The CFCE should be required to follow its existing practice of keeping a separate register of applications that come to it. [71]

### **Section 12**

33. The term “Cathedral Archaeological Consultant” should be changed to “Cathedral Archaeologist”; however individual cathedrals should be free to use their own titles if they wish. The Chapter should also be required to consult the CFCE about the appointment of the consultant and not merely about the qualifications of the person it proposes to appoint. [78]
34. The Measure should not be amended to require each cathedral to have a full-time curatorial adviser. However, in cases where the

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FAC considers that the Chapter should seek curatorial advice, it should as a matter of good practice inform the Chapter of this and of where it considers suitable advice can be obtained.

### **Section 13**

35. The present fixed time limit for the initial compilation of the inventory should be replaced by an obligation to complete the work within such period as the CFCE, after consultation with the Chapter, considers reasonable in the circumstances. The Measure should also allow for the possibility of different timetables for different sections of the inventory. [80]
36. The Chapter should be required to report annually to the FAC on changes made over the preceding year to the inventory and to certify that the inventory is up to date. [81]
37. The reference to “objects in the possession of the Chapter” in section 13(1) should be amended to make it clear that the inventory is to include objects the property in which is vested in the cathedral corporate body or of which that body has or is entitled to possession or custody.
38. Section 13 should also be amended to require the precinct plan to be revised as soon as any relevant changes in land ownership occur. There should be a clearer definition of the “precinct”, which should include so much of the land surrounding the cathedral church and in the ownership of the cathedral corporate body as, in the view of the CFCE, is necessary to protect the architectural, archaeological, artistic and historic context of the cathedral. [84]

### **Section 14**

39. The requirement for the cathedral architect to make a report every five years should be amended to include a requirement for the report to be based on an inspection. [85]
40. A newly appointed architect should be required to carry out a full inspection and make a report within two years of appointment, after which the architect should carry out such inspection on a quinquennial basis as may be necessary for him or her to fulfil the requirement to make a report on what works are necessary. [87 and 88]

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41. The architect should also be required to make an annual summary report to the Chapter on works carried out in the preceding year and on progress with meeting the programme set out in the quinquennial report, and section 20 of the 1999 Measure should be amended so as to apply the same obligation to the “close architect”. [89]
42. The cathedral archaeologist should be required to prepare a strategic report on the archaeology of the cathedral and precinct within two years of his or her appointment. The cathedral archaeologist should also be required to prepare an annual summary report to the Chapter, covering archaeological aspects of work carried out or in prospect. This report could be presented to the Chapter in conjunction with the architect’s annual report. As a matter of good practice, the architect and archaeologist, in all their reporting activities, should collaborate over any recommendations that impact on both their areas of expertise. [91]
43. Section 14(2) should be amended to provide greater clarity as to what is required in terms of record keeping. The cathedral architect, close architect and cathedral archaeologist should, in their annual summary reports to the Chapter, be required to include recommendations as to all those works carried out in the previous year that should be the subject of a permanent record, and in their quinquennial report they should list those records that have been made during the previous quinquennium. The CFCE should provide advice on the form of such records in consultation with the appropriate professional bodies. [92]

### **Section 16**

44. Following the amendments to the Measure, the Care of Cathedrals Rules 1990 should be reviewed and revised as necessary, taking account of any relevant implications of the Human Rights Act 1998. [12]
45. The existing provisions in the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 for the making of Rules to carry the 1990 Measure into effect, which replaced section 16 of the 1990 Measure, should themselves be replaced by a new provision, framed after consultation with the Association of English Cathedrals, for a differently constituted rule committee with appropriate experience and expertise in cathedral matters. [94]

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### Section 18

46. This whole section is redundant and should be repealed. [96]

### Section 20

47. The ambiguity over what falls within the terms “fabric” on the one hand and “building” on the other should be eliminated by substituting the term “fabric” in all cases (except where a difference in meaning is intended), and defining this in section 20. The definition should take in elements of the existing definition of “building” in section 20(1) and section 20(2), so that it includes the cathedral building and any part of it, and any object or structure permanently situated in it.
48. The terms “administrative body” and “chapter clerk” should be replaced by the terms “Chapter” and “the administrator of the cathedral” respectively, in line with the provisions of the Cathedrals Measure 1999. Similarly, where the 1990 Measure refers to ownership, possession or custody of property, it should also refer to the corporate body established under the 1999 Measure as holding the title or rights concerned. [100 and 101]

### Schedules 1 and 2

49. In the case of a appeal to the CFCE under section 9, the Measure should provide that any member of the CFCE who is also a member of the FAC in question may not take part in the CFCE’s deliberations or decision on the appeal. [106]

### Schedule 1

50. Appointed members of the CFCE should not be permitted to serve for more than two complete five-year terms, and the discretion at present given to the Archbishops to permit the re-appointment of an appointed member after two full terms should be removed.. Where a member was appointed or elected to fill a casual vacancy part way through a quinquennium, the Archbishops should retain the discretion to direct that he or she should be eligible to be re-appointed or re-elected for a third term. [109 and 110]

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51. The commencement date of the term of office of CFCE members should be brought into line with that for Boards and Councils, and should be 1st May. [112]
52. The Appointments Committee should have a discretionary power to re-appoint (until the end of its quinquennium) all or any General Synod members elected to the CFCE who cease to be members of the General Synod (and hence of the CFCE) at a general election to the Synod. [113]
53. For the avoidance of doubt, the Measure should make it clear that a person who was appointed as a member of the CFCE (as opposed to being elected by the Synod), and who happened to be a member of the General Synod at that time, should not cease to be a member of the CFCE on ceasing to be a member of the Synod. [114]
54. A number of amendments should be made to paragraph 3 of the Schedule, dealing with the appointment of members of the CFCE by the Archbishops [118]:-
  - (a) The introductory section of paragraph 3(g) (relating to the range of expertise that should be included within that part of the CFCE's membership) should cover the whole of paragraph 3(b) to (g);
  - (b) paragraph 3(g)(iii), which provides for one member to be appointed after consultation with the Chairman of the Royal Fine Art Commission, should be deleted, as that body has ceased to exist;
  - (c) paragraph 3(c) should be amended to provide for the Council for the Care of Churches to nominate three members, of whom two should be members of the Council or a committee of the Council;
  - (d) in paragraph 3(e) the requirement to consult the President of the Royal Institute of British Architects should be deleted, as paragraph 3(d) already contains that requirement;
  - (e) paragraph 3(e) should be divided into two provisions, one for an architect or chartered building surveyor experienced in the conservation of historic buildings to be appointed after consultation with the President of the Ecclesiastical

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Architects and Surveyors Association; and the other for a chartered engineer with experience of the care of historic buildings to be appointed after consultation with the Engineers' Institutions already specified.

55. The CFCE's Annual Report should be more extensive, to be produced perhaps in parallel or in conjunction with that for the Council for the Care of Churches. [119]
56. For the avoidance of doubt, a provision should be added to Schedule 1 under which decisions of the CFCE are to be reached by a majority of members present and voting, with the Chairman having a second or casting vote. [120]
57. A review of the CFCE's pattern of conducting its business should take place as part of the reconsideration of the Care of Cathedrals Rules 1990. [121]
58. Paragraph 16 should be amended to allow the CFCE to appoint a representative number of members to hold a public hearing and report back to the full CFCE. [122]

### **Schedule 2**

59. Paragraph 1(a) should be amended to delete the words "who are in Holy Orders", as after the implementation of the 1999 Measure the Chapter will in all cases include lay people, and all members of the Chapter, whether lay or clerical, should be excluded from membership of the FAC. [123]
60. Paragraph 9 should be amended to make it clear that the process of consultation that is required for an initial appointment is also to apply to the filling of a casual vacancy. [124]
61. Paragraph 3 should be amended so that the dean continues to be entitled to attend FAC meetings, and to speak but not to vote, but so that the residentiary canons as such cease to have that right, and instead such other members of the Chapter as the Chapter considers appropriate, after consulting the FAC, are to be entitled to attend and speak but not vote. As a matter of good practice, the number of Chapter members attending FAC meeting should not be so great as to distort the dynamics of the meeting or as to make the FAC feel under pressure and thus compromise its independence. [129]

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62. All members of the Chapter should be disqualified from holding office as secretary of the FAC. In addition, as a matter of good practice, the FAC should consider any issues of potential conflict of interests before appointing its secretary. [130]

### **Part B – Secular legislation and control**

#### *Planning permission*

63. In general, especially in view of the scale and impact of some developments in cathedral precincts, the current position regarding the interrelationship between planning permission and approval under the Measure should continue, as being in the best interests of cathedrals. Thus a legal requirement for the Chapter to obtain planning permission should not in general remove the need to obtain any approval required under the Measure. This dual control provides the occasion for major schemes to be scrutinised by the expert national body on cathedrals, and can also inform the planning process.
64. In order to enhance the positive value of dual control in the case of planning permission, steps should be taken to raise the profile of the CFCE's advice in the eyes of local planning authorities. This could be achieved, at any rate in the first instance, through non-statutory guidance issued by the DETR. [137]
65. To deal with some possible marginal cases where the CFCE is satisfied that it is not necessary to insist on dual control, the CFCE should be given a discretionary power to direct that where there is an application for planning permission, and the CFCE is satisfied that the local planning authority is giving full consideration to the issues that would normally be dealt with under the Measure, the Chapter need not also submit an application for approval to the CFCE itself. [138]

#### *Listed Building Control*

66. In the long term, the strategic aim in relation to listed building control as it applies to cathedrals should be to eliminate dual control. However, in the short term, the only real overlap is in the area of archaeology. It is important to retain the holistic overview of the protection of archaeological remains within the precinct

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currently exercised by the CFCE. The need for approval under the Measure should thus not be removed *ipso facto* by an application for listed building consent. Rather, the CFCE should have a discretionary power to direct that where there is an application for listed building consent, and the CFCE is satisfied that full consideration is being given to archaeological issues by the local planning authority, the Chapter need not also apply for approval to the CFCE. [141]

67. As a matter of good practice, it is desirable for leases of cathedral property to include an obligation on the tenant to consider archaeological matters before seeking permission to carry out work. [142]

### ***Scheduled Monument Consent***

68. Here again, the long term strategic aim should be to remove dual control, although there is an issue as to whether the preferred national strategy for the archaeological care of cathedrals should be through the holistic procedures of the Measure rather than through scheduling. There is also a short term issue over scheduling underneath cathedrals. A permanent legislative solution to the issue, along the general lines indicated in paragraph 4.19 of *Protecting our Heritage* should be pursued. This would make it possible for the issue of sites underlying cathedrals as well as the issue of dual control in the wider precinct to be resolved, and the same solution should also be pursued in relation to non-cathedral churches. A draft of suggested provisions should be sent to the DCMS so as to be readily available for possible inclusion in any a future Bill. [145 and 146]
69. However, future discussion of the extent of any exemption from scheduled monument control should not necessarily be confined to what was proposed in *Protecting our Heritage* but should take account of how the strong archaeological safeguards under the Measure relate to the Government's strategy for archaeological protection in urban areas. [147]
70. While awaiting any legislative change, it is important for the Church to develop a practical understanding with the DCMS and English Heritage on a non-statutory basis, first, as to which are the ecclesiastical buildings in ecclesiastical use (and therefore exempt

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from scheduling) and, second, for the avoidance of further scheduling underneath those buildings. [148]

### ***Treasure Act 1996***

71. Some minor amendments to the Measure will be needed to tie in with the provisions of the proposed Order providing for a limited exemption from the Act (in relation to both churches and cathedrals) and with the DCMS's requirements. These would provide for the CFCE to be notified of the discovery of what would otherwise be an item of treasure, would require the CFCE to deal with any application for approval of its disposal; would require such items to be identified in the cathedral inventory; and in the event of any disposal would require the British Museum (or another museum nominated by it) to have a prior option to purchase, with a mechanism for agreeing a valuation. [149]

### ***Disused Burial Grounds***

72. The need for the law as it applies to consecrated but disused burial grounds of cathedrals to be brought into line with that which applies to other categories of disused burial grounds belonging to churches and other religious bodies should be pursued through the current Review of the Pastoral and Dioceses Measures.

## **Part C – The Royal Peculiars and other non-cathedral churches**

73. The Measure (and the Care of Cathedrals (Supplementary Provisions) Measure 1994) could in principle be adapted to cover these two Peculiars in the way suggested by the Report of the Review Group on the Royal Peculiars. It is not possible to make any firm recommendation at this time as to whether the proposals of the Review Group should be implemented, given that the reaction of all the interested parties, including the Deans and Chapters of the two Peculiars themselves and the DCMS, is not yet known, and that all those reactions are unlikely to be made public in the immediate future. [155]
74. If Westminster Abbey and St George's Chapel, Windsor were to come within the Measure, the consequent increase in the workload placed on the CFCE would need to be appropriately resourced. [156]

## ***Report of the Care of Cathedrals Measure Review Group***

75. The Measure should not be amended to allow for other “large churches” to be brought within its scope. These churches are not in the same position as cathedrals; they have their own particular structures and pastoral concerns, and do not have the cathedrals' administrative resources.

### **Part D – General matters**

76. The importance of the works department of a cathedral and its proper management needs to be more fully recognised, and guidance should be provided on good practice in this area. [158]
77. The CFCE should pursue the issue of the proper curation of archaeological finds in conjunction with the Association of Diocesan and Cathedral Archaeologists. [159]
78. Although the outcome of the review proposed by English Heritage of its grant programme to cathedrals is not yet known, it is essential to emphasise that the continuation of Government assistance towards the repair of historic cathedral fabric is of fundamental importance. [161]
79. The issue of disabled access to cathedrals should continue to be dealt with by a working party of the CFCE and the Council for the Care of Churches. [162]

### **Part E – Chapter 10 of *Heritage and Renewal***

80. The Church should adopt a broad long-term strategy, in collaboration with the relevant Government Departments and the amenity bodies, for eliminating dual control (particularly as regards listed building and scheduled monument controls) in relation to all places of worship, so far as is possible without undermining the integrity of the procedures under the Measure and the faculty jurisdiction. [167] See paragraphs 63-70 above.
81. Further progress in ensuring the effective internal management of the structures and procedures established by the 1999 Measure can best be achieved through guidance material rather than through legislation. [168]
82. The duties of both the cathedral architect and the cathedral archaeologist should be better defined. In general this again can

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- best be dealt with by guidance material, prepared by the CFCE in consultation with the relevant professional bodies; as regards amendments to the Measure, see paragraphs 39-43 above. [169]
83. The financial allocation to the CFCE is rightly a matter for the Archbishops' Council, but it is essential to highlight that the effectiveness of the Measure in the eyes of cathedrals, the Government, the amenity bodies and other interested parties, and indeed, the continuance of the ecclesiastical exemption in relation to cathedrals, depends on the CFCE being able to fulfil its statutory functions. [172]
84. It is too early to include provision for either an audit of objectives or a conservation plan in the Measure, as the place of these is still developing in the cathedral context. Thus that recommendation by the Archbishops' Commission is better pursued at present by guidance on good practice. [175]
85. The best way of making further progress with the Commission's recommendation for cathedrals to have a fire safety policy statement and a fire safety manual and logbook is through further advice on good practice, in addition to the joint guidelines on fire safety in cathedrals already published by the CFCE and English Heritage. [176]
86. The need for disaster recovery planning should also be addressed by advice on good practice. [177]

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### **Appendix I**

#### **Submissions to the Group at its first consultation**

<b>1</b>	Anonymous x 2
<b>2</b>	Association of Cathedral Archaeologists
<b>3</b>	Mr Christopher Ball – Secretary to the Appointments Committee
<b>4</b>	Mr Peter Binfield
<b>5</b>	Mr M J Bland
<b>6</b>	Bradford, The Bishop of
<b>7</b>	Bradford Cathedral FAC
<b>8</b>	Canterbury Cathedral
<b>9</b>	Carlisle Cathedral
<b>10</b>	Carrick District Council
<b>11</b>	Cathedral Architects' Association
<b>12</b>	Chelmsford Cathedral
<b>13</b>	Chester Cathedral
<b>14</b>	Chichester, The Bishop of
<b>15</b>	Chichester Cathedral
<b>16</b>	His Honour Judge T A C Coningsby QC Vicar-General of York
<b>17</b>	Council for the Care of Churches
<b>18</b>	Coventry Cathedral
<b>19</b>	Durham Cathedral and FAC
	Ecclesiastical Architects' and Surveyors' Association
<b>20</b>	Ely Cathedral FAC
<b>21</b>	English Heritage
<b>22</b>	FAC Chairmen – combined submission
<b>23</b>	Gloucester Cathedral FAC
<b>24</b>	Guildford Cathedral and FAC
<b>25</b>	Hereford, The Bishop of
<b>26</b>	Hereford Cathedral and FAC
<b>27</b>	Institution of Civil Engineers
<b>28</b>	Professor K H Murta
<b>29</b>	Newcastle Cathedral
<b>30</b>	Newcastle City Council
<b>31</b>	Newcastle Cathedral FAC
<b>32</b>	Norwich Cathedral FAC
<b>33</b>	Peterborough Cathedral FAC
<b>34</b>	Royal Institute of British Architects
<b>35</b>	Royal Institution of Chartered Surveyors
<b>36</b>	St Albans Cathedral
<b>37</b>	St Albans Cathedral FAC
<b>38</b>	St Paul's Cathedral
<b>39</b>	Salisbury Cathedral
<b>40</b>	Salisbury Cathedral FAC

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41	Mr David Scott
42	Secretary General
43	Sheffield Cathedral FAC
44	Society for the Protection of Ancient Buildings
45	Mrs Gillian Spencer
46	Mr Mark Taylor, Consultant Archaeologist, Chichester Cathedral
47	Truro Cathedral
48	Truro Civic Society
49	Wakefield, The Bishop of
50	Wakefield Civic Society
51	Wakefield Metropolitan District Council, City of
52	Winchester: the Bishop, Cathedral and FAC
53	Winchester Preservation Trust Ltd
54	Worcester Cathedral
55	Worcester Diocesan Registrar

### **Appendix II**

#### **Submissions to the Group at its second consultation**

1	Archaeologists, Association of Diocesan and Cathedral
2	Bath and Wells FAC
3	Bristol Cathedral
4	Canterbury Cathedral
5	Cathedral Architects' Association
6	Cathedrals Fabric Commission
7	Chester Cathedral
8	Chichester Cathedral
9	His Honour Judge T A C Coningsby QC Vicar- General of York
10	Durham Cathedral
11	Gloucester FAC
12	Guildford Cathedral
13	Hereford Cathedral
14	Lichfield Cathedral
15	Lincoln Cathedral
16	Manchester FAC
17	Professor K H Murta
18	Joint Committee of the National Amenity Societies
19	Newcastle Cathedral
20	Norwich Cathedral
21	Dr Martin Purdy – Architect, Wakefield Cathedral
22	Mr Tony Redman – Synod member

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23	Ripon Cathedral
24	Rochester FAC
25	St Albans Cathedral
26	St Albans FAC
27	St Paul's Cathedral
28	Salisbury Cathedral
29	Sheffield FAC
30	Truro Cathedral
31	Worcester FAC
32	York – the Chapter Steward, Dean and FAC

### **Appendix III**

#### **PROCEDURAL GUIDESTO THE CARE OF CATHEDRALS MEASURE**

**(A series designed to provide straightforward and practical guidance on the operation of different aspects of the Care of Cathedrals Measure.)**

##### **Issued August 2000:-**

1. The Care of Cathedrals Measure: a general introduction.
2. Proposals Requiring Approval: what requires approval and to whom should an application be made?
3. Making an Application: procedures for Cathedral Administrators.
4. Fabric Advisory Committees: their role and functions.
5. Determining an Application: procedures for Fabric Advisory Committees.

##### **In Preparation:-**

6. Cathedral Inventories: their purpose, scope and compilation.
7. The Cathedral Precinct: its definition and purpose.
8. The Cathedrals Fabric Commission for England: its role and functions.
9. Determining an Application: procedures for the Cathedrals Fabric Commission.
10. Local Planning Authorities, English Heritage, the National Amenity Societies and the Public: their role under the Care of Cathedrals Measure.

##### **Guidance Notes**

(A series providing detailed guidance on the statutory requirements of the *Care of Cathedrals Measure* and its implementation.)

*Guidelines on Applications to the Commission* (March 1991).

- GN1 Not current.  
GN2 replaced by GN8.  
GN3 *Designation of Cathedral Precincts under Section 13 of the Care of Cathedrals Measure* (January 1993).  
GN4 *Procedures for Major New Developments within Cathedral Precincts* (November 1994).

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GN5 *Cathedrals and Archaeology: A Guide to Good Management* (November 1994).

GN6 *Cathedral Organs and the Care of Cathedrals Measure* (November 1994).

GN7 *Cathedral Inventories: Designation of Outstanding Items* (February 1996).

GN8 *The Care, Conservation and Development of Cathedrals* (November 1999).

### **Advisory Notes**

(A series offering advice on recommended good practice for the care and conservation of Cathedrals.)

*Advisory Note for the Administrative Body of a Cathedral on Actions Preceding Selection*

*of a Cathedral Architect under the Cathedrals Measure 1963 and Care of Cathedrals Measure 1990* (revised April 1995).

AN1 *Good Practice for the Care of Ledger Stones and other Floor Memorials in Cathedrals* (January 1997).

### **Directions and Advisory Guidelines on Cathedral Inventories**

(The Directions have statutory effect under section 13(1) & (2) of the Measure and Rule 13. The Guidelines offer advice on recommended good practice. They are currently being consolidated from six into two documents.)

*Directions for the Form of the Inventory of a Cathedral Church* (April 1992).

*Advisory Guidelines* supplemental to the preceding (April 1992).

*Special Directions for the Form of the Inventory of a Cathedral Church: Printed Books and Manuscripts* (May 1993).

*Advisory Guidelines* supplemental to the preceding (May 1993).

*Special Directions for the Form of the Inventory of a Cathedral Church: Archival Materials* (May 1993).

*Advisory Guidelines* supplemental to the preceding (May 1993).

### **Other Publications**

*Cathedral Fabric Records* (a joint publication with English Heritage, July 1995).

*Fire Safety Management in Cathedrals* (a joint publication with English Heritage, March 1997).

*The Role and Duties of the Cathedral Architect* (issued by the Cathedral Architects Association and endorsed by the Commission, revised March 1991).

*The Role and Duties of the Cathedral Archaeological Consultant* (issued by the Association of Cathedral Archaeologists and endorsed by the Commission, revised March 1996).

All of the above are available, single copies free of charge, from the Cathedrals Fabric Commission, Church House, Great Smith Street, London, SW1P 3NZ