

GENERAL SYNOD

DRAFT CARE OF CATHEDRALS RULES 2006

Explanatory Memorandum

Introduction

1. These Rules are made to enable the Care of Cathedrals (Amendment) Measure 2005 (“the 2005 Measure”), which amends the Care of Cathedrals Measure 1990 (“the 1990 Measure”), to be brought fully into force.
2. The 2005 Measure does not alter the basic principles underlying the 1990 Measure but it implements the recommendations made in the Report of the Care of Cathedrals Review Group, which was before the General Synod at the July 2001 Group of Sessions. That Group concluded that in general the 1990 Measure was working well but it went on to recommend certain amendments to the 1990 Measure as well as some new provisions to improve the system. At final approval stage in February 2003 the Synod gave the amending Measure unanimous support in all three Houses.
3. During the passage of the 2005 Measure through the Synod it was made clear to members that “if and when the draft Measure became law it would need to be supplemented by a fresh set of rules. They would fill in the detail of some of the new legislation ...” (paragraph 9 of the Revision Committee Report (GS 1429Y)).
4. In order to enable the Rule Committee to have the benefit within its membership of three persons nominated by the Association of English Cathedrals and three nominated by the Cathedrals Fabric Commission for England (“CFCE”), as provided for in the 2005 Measure, the relevant provisions (paragraph 6 of Schedule 3 and section 19 so far as it relates to that paragraph) were brought into force on 6th June 2005.
5. The Rule Committee at its first meeting considered whether to amend the existing rules, the Care of Cathedrals Rules 1990 (“the 1990 Rules”), or to replace them with a new set of rules. The Committee concluded that a new set of rules would avoid the confusion for users of having to deal with two sets of rules together and would allow out of date terminology in the 1990 Rules (pre-dating the new constitutions and statutes now in force under the Cathedrals Measure 1999) to be replaced. Accordingly, these new Rules revoke the 1990 Rules and replace them in their entirety.

6. The Rule Committee was informed that a general issue, which was noted during the work on the 2005 Measure, was that the 1990 Rules contained very little detailed provision regarding the procedure of a Commission of Review (the appellate tribunal for appeals from the CFCE). Although no Commission of Review has been convened since 1990 the Rule Committee considered that appropriate rules and forms should be in place to assist users in the event of a Commission of Review being necessary in the future. Rules 17 to 21 and Forms 19 to 24 therefore make provision for reviews by Commissions of Review.

New provisions

7. The new provisions in the 2005 Measure which have required rules to be made to implement them are as follows. (References to section numbers are to the 1990 Measure as amended).

- In certain cases where planning permission, listed building consent or scheduled monument consent would be needed to carry out all the work covered by the proposal, the CFCE, at the request of the Chapter, may declare that the particular proposal does not require approval under the 1990 Measure (section 6(2C) and rule 4);
- On an application to the fabric advisory committee (“FAC”) for approval of a proposal which would materially affect the architectural, archaeological, artistic or historic character of the building and in certain other instances, the administrator is required to notify English Heritage and the national amenity societies as well as the local planning authority of the proposal (section 7(1) and rule 5);
- Where approval is sought for the sale, loan or other disposal of an object of outstanding architectural, archaeological, artistic or historic interest, then the CFCE may consult the Church Commissioners on any financial considerations (other than the valuation of the object), and may request the Chapter to consult the cathedral Council, if it has not already done so, and inform the CFCE of the Council’s views (section 8(2A) and (2B) and rule 14);
- A tenant is given a right of appeal, whether or not the Chapter decides to appeal, against a refusal of approval, or an approval subject to conditions, for works which the tenant proposes to carry out and for which the Chapter’s consent is required (section 10C and rules 9 and 21);
- The CFCE and each FAC is now required to keep a register of applications for approval dealt with by it. The register is to be open to public inspection and extracts relating to a particular application

are to be supplied in return for a reasonable fee (section 10B and rule 27);

- Changes have been introduced in respect of the content and timescale for compiling and maintaining an inventory (section 13 and rule 28);
- It is now the duty of the Chapter to make and maintain a permanent record in relation to works carried out in the previous year in cases where the cathedral architect or surveyor of the fabric or the cathedral archaeologist advises that this should be done (section 14B and rule 29).

Treasure

8. A new section 6A was added by the 2005 Measure following the new law on treasure contained in the Treasure Act 1996. At the time when the Bill which became the 1996 Act was before Parliament, the Government gave a commitment to bring forward an order excluding objects from the Act if they would not have been treasure trove under the previous law and were found in association with a burial on consecrated ground or were otherwise within the Church of England's own controls. It was agreed that the Church would deal with the objects concerned in a manner which was analogous to that under the 1996 Act. Section 6A was drafted in consultation with staff of the Department for Culture, Media and Sport ("DCMS") who were content with the wording. The Rule Committee concluded that the subject of treasure was a special matter likely to arise only infrequently and that it should therefore be dealt with separately under the rules. The procedure in relation to discovery within the cathedral precinct of objects that might otherwise be treasure, reporting them and determining their status is therefore set out in Schedule 1 to these Rules. The Schedule also contains provisions relating the display of objects and access by the public, applications for approval of the sale, loan or disposal of a relevant object, and (in the case of a sale or other disposal) provisions for allowing a museum an opportunity to purchase the object. The draft Schedule has been discussed in detail with the staff of the DCMS, who have found no reason to object to it.

Consultation on the Rules

9. Early this year the Rule Committee conducted a consultation on the draft rules and forms at the stage in their preparation which had then been reached. Copies were circulated to all Cathedral Deans, all administrators and all FAC secretaries as well as to the Association of English Cathedrals, the Association of Cathedral Administrators, the DCMS, English Heritage, the national amenity societies and other interested bodies. Responses were received from four Chapters, ten FACs and one Administrator, and from the DCMS, English

Heritage, the Society for the Protection of Ancient Buildings and most of the other interested bodies. The Rule Committee is grateful to all who responded and has considered all the responses most carefully. In consequence the Committee has made a number of amendments to the rules and forms to meet various points which were raised by the consultees. Opinion was divided about the number of forms provided but the majority of responses supported them, reasons given being that they would ensure that the necessary information is provided at the outset and that bodies are consulted appropriately instead of being “forgotten”, thus delaying the process.

10. The Rule Committee considered whether the number of forms was appropriate, and decided that it was, because each form serves its particular purpose. In the Rule Committee’s view the number and detail of the forms would not impose a burden on those who had to complete them; on the contrary, the forms were designed to assist those completing them with guidance as to the procedures to be followed and the information which had to be supplied. The majority response to the consultation, referred to in paragraph 9 above, accepted that the forms would in fact succeed in meeting these objectives. It was recognised that some of them would only be used infrequently, because they dealt with what would be comparatively rare procedures, but they would be there as a resource as and when need for them arose, and indeed they would be particularly helpful for those who had to invoke an unfamiliar procedure. However, at the time of the consultation there was no index to the forms and this caused some consultees to comment that finding the right form would not be easy. The Rule Committee has therefore divided Schedule 2 to the Rules, containing the forms, into Parts with indices so as to enable the user readily to locate the appropriate form.

Guidance from the Cathedrals Fabric Commission

11. It is the intention of the CFCE to update its existing detailed procedural guidance on the operation of the 1990 Measure for Chapters, professional advisers and FACs in the light of the changes made by the 2005 Measure and these new Rules. The revised guidance will be available once the remaining provisions of the 2005 Measure and these Rules come into force.

THE RULES

Details of what the Rules contain

12. A detailed explanation of the content of the Rules is contained below (on a Part by Part basis).

Part 1: Citation, commencement, revocation and interpretation

13. **Rule 1** Rule 1(1) provides for all the rules except rule 16 and Schedule 1 to come into force on the same date as section 1 of the 2005 Measure. (This date will be appointed by the Archbishops under section 20(3) of the 2005 Measure.) Rule 16 and Schedule 1 will come into force as soon as an order has been made under section 2(2) of the Treasure Act 1996 in relation to objects found within cathedral precincts.

14. Under Rule 1(2) the revocation of the 1990 Rules will take effect when these 2006 rules come into force under rule 1(1).

15. **Rule 2** This contains definitions of particular words and expressions which are used in these Rules. (The definition of “national amenity societies” takes account of the fact that the power in the 1990 Measure to add to the list of national amenity societies for the purpose of the Measure has been used to add the Twentieth Century Society.)

Part 2: Preliminary Determinations

16. **Rule 3** This rule replaces a similar rule in the 1990 Rules enabling a Chapter or an FAC to request the CFCE to determine the body from which approval of a proposal is required. A form (**Form 1**) has been provided for this purpose.

17. **Rule 4** This is a new rule setting out the procedure to be followed where a Chapter wishes to request the CFCE to declare that no approval is required under the Measure in reliance on the new section 6(2C). A form (**Form 2**) is provided to assist the Chapter and sub-rules (5) to (7) set out the procedure to be followed by the CFCE and the timescale of 28 days for a decision.

Part 3: Application to fabric advisory committee

18. **Rule 5** This rule deals with applications for the approval of the FAC and replaces a similar rule in the 1990 rules but is updated to take account of the new requirement for notification of English Heritage and others mentioned in paragraph 7 above. Forms for the application (**Form 3**), the public notice (**Form 4**) and for the decision of the FAC (**Form 5**) are provided.

19. **Rule 6** This rule introduces a procedure to be followed where a Chapter wishes the CFCE to deal with an application which the FAC has failed to determine within the period of three months from the date of the application. A form (**Form 6**) is provided for the request to be made to the CFCE and a form (**Form 7**) for the decision of the CFCE.

Part 4: Application or appeal to the Commission

20. **Rule 7** This rule deals with applications for the approval of the CFCE and replaces a similar rule in the 1990 Rules. Forms for the application (**Form 8**), the public notice (**Form 9**) and for the decision of the CFCE (**Form 10**) are provided.

21. **Rule 8** This rule deals with appeals to the CFCE against a decision of the FAC and replaces a similar rule in the 1990 Rules. A form of notice of appeal (**Form 11**) and a form for the CFCE's decision (**Form 12**) are provided.

22. **Rule 9** This is a new rule setting out a procedure to be followed on an appeal against the decision of the FAC refusing to give approval, or giving approval subject to conditions, to a proposal for the carrying out of works by a tenant for which the Chapter's consent is required. The 2005 Measure has given the tenant a right of appeal independently of the Chapter, as stated in paragraph 7 above, and the rule make provision both for a joint appeal by the Chapter and the tenant and for an appeal by the tenant alone. A form for the application (**Form 13**) and a form for the decision of the CFCE (**Form 14**) are provided.

Part 5: Proposals affecting clergy housing

23. **Rule 10** This rule replicates the rule in the 1990 Rules relating to certain proposals affecting clergy housing, updated to refer to the Chapter and the administrator.

Part 6: Notice of application for Listed Building or Scheduled Monument Consent

24. **Rule 11** This rule replicates the rule in the 1990 Rules. A form (**Form 15**) is provided for the notice to be given to the CFCE under section 15 where the Chapter proposes to apply for listed building consent or scheduled monument consent in respect of a building or monument within the precinct.

Part 7 and Schedule 1: Objects of interest and Treasure

25. **Rules 12 and 13** These rules explain which body the Chapter should apply to for approval of a proposal for the sale, loan or disposal of, or work to, an object of architectural, archaeological, artistic or historic interest, depending upon whether it is of outstanding interest or not.

26. **Rules 14 and 15** Rule 14 is a new rule which implements the new provisions for consultation with the Church Commissioners and the cathedral Council referred to in paragraph 7 above. So far as applications for approval of proposals relating to an object of interest are concerned, rules 14 and 15 also provide that the procedure in rule 7 shall apply to an application to the CFCE

falling within rules 12(a) or 13(a), and that the procedure in rule 5 is to be followed for an application to the FAC within rules 12(b) and 13(b).

27. **Rule 16 and Schedule 1** These are new. They implement the new provisions regarding objects which would otherwise be treasure and deal with the matters referred to in paragraph 8 above.

Part 8: Request for review by Commission of Review

28. **Rules 17 to 21** These rules provide much more detailed procedural guidance in respect of reviews by a Commission of Review than appeared in the 1990 Rules. This is in response to the perceived lack of detail in the 1990 Rules referred to in paragraph 6 above. Rules 17 and 18 deal with requests for an application to be dealt with by a Commission of Review when there has been an application to and determination by the CFCE following non-determination by the FAC (rule 17), or where there has been non-determination by the CFCE within the requisite period of 3 months (rule 18). Rules 19 and 20 relate to a request for a review by a Chapter of a decision of the CFCE on an application to it for approval of a proposal (rule 19), or against a decision on appeal to the CFCE from a decision of the FAC (rule 20). There is a completely new provision for an appeal against a decision of the CFCE on an application by a tenant (rule 21), as referred to in paragraph 7 above and also under rule 9. Forms (**Forms 19 to 23**) are provided in each case for each type of request, together with a form for the decision of the Commission of Review (**Form 24**) to be adapted for the particular type of appeal.

Part 9: Procedure and evidence

29. **Rules 22 to 26** These rules replace similar provisions in the 1990 Rules but provide more detail in relation to the conduct of meetings of the FAC and the CFCE as well as a Commission of Review. Rule 22 provides for the persons who may attend a meeting of the FAC. Rule 23 deals with the arrangements for a public hearing, if the CFCE decides to hold one. Rule 24 deals with the procedure of a Commission of Review, including the possibility of orders for costs. Rule 25 provides detailed procedure for dealing with the situation if a member, or the chair, of the CFCE or a FAC has a personal interest in a matter to be discussed at a meeting. Rule 26 provides for evidence which may be received on any application, appeal or request under the rules.

Part 10: Registers of applications to fabric advisory committee and Commission

30. **Rule 27** This is a new rule which implements the new provision for a register of applications for approval dealt with by each FAC and the CFCE to be kept by them, as referred to in paragraph 7 above. The rule requires the register to be available for inspection by any person free of charge by prior appointment

and for an extract to be supplied in respect of a particular application. So far as further extracts are concerned, there is a discretion in sub-rules (2)(c) and (4)(c) as to whether to supply them. Anyone applying for an extract will have to pay such reasonable fee as is fixed from time to time by the FAC (sub-rule (3)) or the CFCE (sub-rule (5)), as the case may be. Forms for the registers are contained in the Rules (**Forms 25 and 26**).

Part 11: Inventories and cathedral records

31. **Rule 28** This rule replaces the limited provision in the 1990 Rules by detailed procedures in respect of the compilation, maintenance and storage of a cathedral's inventory. It implements the changes introduced by the 2005 Measure, as referred to in paragraph 7 above. Sub-rule (8) provides for precautions to be taken in respect of access to the inventory in the interest of security by limiting access to persons who at the time for inspection can produce evidence of authorisation and identity.

32. **Rule 29** This is a new rule which implements the new duty of the Chapter, referred to in paragraph 7 above, to make and maintain records of work carried out in the previous year of which a permanent record should in the opinion of the cathedral architect or surveyor of the fabric, or the cathedral archaeologist, be maintained.

Part 12: Miscellaneous and General

33. **Rules 30 to 33** Rules 30 and 31 replace some similar provisions in the 1990 Rules relating to sending or delivery of documents and supplying copies of documents. Rule 32 defines the date for compliance with a time limit, and rule 33 enables any irregularity or error of procedure to be dealt with.

Schedules

34. **Schedule 1: Treasure** The contents of this Schedule are dealt with in paragraphs 8 and 27 above.

35. **Schedule 2: Forms** Each of the forms in this Schedule is dealt with above in the context of the rule or the paragraph of Schedule 1 to which the form relates.

20 June 2006