

CARE OF CATHEDRALS MEASURE 2011

Sections & schedule relevant to FACs

Please note that all numbering in this document relates to the Care of Cathedrals Measure 2011. The full text of the Measure is available on the ChurchCare website.

1. Duty to have regard to cathedral's purpose

Any body on which functions of care and conservation are conferred by this Measure shall in exercising those functions have due regard to the fact that the cathedral church is the seat of the bishop and a centre of worship and mission.

2. Approval required for alterations to cathedrals

(1) Subject to subsection (2) and to sections 5 and 6 the Chapter of a cathedral shall not, unless it has been approved under this Measure, implement or consent to the implementation of any proposal—

(a) for the carrying out of works, including works of repair or maintenance, on, above or below land the fee simple in which is vested in the corporate body, being works which would materially affect—

(i) the architectural, archaeological, artistic or historic character of the cathedral church or any building within the precinct of the cathedral church which is for the time being used for ecclesiastical purposes, or

(ii) the immediate setting of the cathedral church, or

(iii) any archaeological remains in or under the cathedral church or within its precinct, or

(iv) any human remains in or under the cathedral church or within its precinct, or

(b) for the sale, loan or other disposal of any object the property in which is vested in the corporate body or which is in the possession or custody of the corporate body or to whose possession or custody the corporate body is entitled, being an object of architectural, archaeological, artistic or historic interest, including any object to which section 7 applies, or

(c) for the carrying out of any work to any such object as is referred to in paragraph (b) which would materially affect the architectural, archaeological, artistic or historic character of the object, or

(d) for the permanent addition to the cathedral church of any object which would materially affect the architectural, archaeological, artistic or historic character of the cathedral church.

(2) Subsection (1) shall not apply in relation to anything which—

(a) is done by the Chapter in furtherance of its duties under the constitution and statutes of the cathedral church with respect to the ordering of services or otherwise in furtherance of the mission of the cathedral church,

(b) is of a temporary nature, and

(c) does not materially affect the fabric of the cathedral church.

(3) Where a proposal has been implemented in contravention of this section, anything done in connection with that implementation may be approved under this Measure and, in that event, shall be deemed to have been done in compliance with this section.

[3. CFCE]

4. Establishment of fabric advisory committees

(1) The Chapter of every cathedral and the Commission shall jointly establish a committee, to be called the fabric advisory committee, which shall have the functions assigned to it by this Measure.

(2) It shall be the duty of the fabric advisory committee—

(a) to give advice to the Chapter of the cathedral on the care, conservation, repair or development of the cathedral church, any archaeological remains in or under the cathedral church or within its precinct, any buildings within its precinct, the landscape and environment in which the cathedral church is situated and any objects referred to in section 2(1)(b); and

(b) to consider and determine any application made to it in accordance with the provisions of this Measure by the Chapter of the cathedral.

(3) Schedule 2 shall have effect with respect to fabric advisory committees.

5. Powers of fabric advisory committee in relation to application of section 2

(1) The fabric advisory committee shall have power—

(a) if requested to do so by the Chapter, to determine whether, under section 2(1), an application for approval of a proposal by the Chapter is required to be made; and

(b) after consultation with the Chapter and subject to the agreement of the Commission, to determine that section 2 is not to apply to proposals of any class or description specified by the committee and to vary or revoke any determination made under this paragraph.

(2) If the Chapter wishes to have it determined whether a proposal is one to which section 2 does not apply by virtue of subsection (1)(b) the fabric advisory committee shall have power to determine that question.

(3) Where the Commission has made a determination under section 6(2) in relation to any matter, the fabric advisory committee shall not make a determination under subsection (1)(a) in relation to the same matter.

6. Body to which application for approval to be made

(1) Any application for approval for a proposal shall be made to the Commission where—

(a) the proposal would involve—

(i) the carrying out of works, including works of repair or maintenance, which would permanently alter the fabric of the cathedral church or any building within the precinct of the cathedral church which is for the time being used for ecclesiastical purposes, or

- (ii) the demolition of any part of the cathedral church or any such building, or
- (iii) the disturbance or destruction of any archaeological or human remains in or under the cathedral church or within its precinct, or
- (iv) the sale, loan or other disposal of or the carrying out of any work to any object for the time being designated under section 24(4) in relation to the cathedral church as being of outstanding architectural, archaeological, artistic or historic interest, or

(b) the Commission declares in writing that the proposal gives rise to considerations of such special architectural, archaeological, artistic or historic interest that the application should be determined by it;

and any application for approval for any other proposal other than an application under section 7(4)(a) shall be made to the fabric advisory committee.

(2) If the Chapter or the fabric advisory committee wishes to have it determined whether under subsection (1) an application for approval is required to be made to the committee or to the Commission, the Commission shall have power to determine that question.

(3) If the Commission considers that a proposal falls within subsection (1)(a), but that the proposal does not give rise to considerations of sufficient importance to require an application to be considered by it, it may make a declaration in writing to that effect and any application for approval of the proposal shall be made instead to the fabric advisory committee.

(4) The Commission shall also have power, subject to subsection (5), to determine that subsection (1)(a) shall not apply to proposals of any class or description specified by the Commission in relation either to cathedrals generally or to such cathedrals as may be specified.

(5) Before making a determination under subsection (4), the Commission shall consult any relevant Chapter and any relevant fabric advisory committee, English Heritage, the national amenity societies (or such person as the societies shall jointly appoint for the purposes of this section) and, in the case of a proposal described in section 2(1)(a), any relevant local planning authority.

(6) Any application for approval of a proposal specified by the Commission under subsection (4) shall be made instead to the fabric advisory committee.

(7) The Commission may revoke or vary any determination under subsection (4).

(8) If, following a request in writing from the Chapter of a cathedral, the Commission is satisfied—

(a) that a proposal or intended proposal falls within section 2(1)(a)(ii) or (iii) but does not fall within section 2(1)(a)(iv);

(b) that the proposal does not relate to the cathedral church itself or a building within the precinct of the cathedral church for the time being used for ecclesiastical purposes;

(c) that planning permission, listed building consent or scheduled monument consent is required for the carrying out of all the works to which the proposal relates; and

(d) that any considerations relevant to preserving the immediate setting of the cathedral church or any archaeological remains in or under the cathedral church or within its precinct will be or have been adequately taken into account by the person or body responsible for granting the permission or consent;

the Commission may, after consulting the local planning authority, the fabric advisory committee and English Heritage, make a declaration in writing that no approval is required under this Measure for the proposal.

(9) In subsection (8) “planning permission”, “listed building consent” and “scheduled monument consent” have the meanings respectively assigned to them by section 336(1) of the Town and Country Planning Act 1990 (c. 8), section 8(7) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c. 9) and section 2(3)(a) of the Ancient Monuments and Archaeological Areas Act 1979 (c. 46).

(10) Where—

(a) an application has been made to the fabric advisory committee by virtue of subsection (1) (not being an application in respect of which a determination has been made under subsection (2)), and

(b) at least three members of the committee present and voting determine that the proposal in question gives rise to considerations of such special architectural, archaeological, artistic or historic interest that the application should be determined by the Commission,

the secretary of the committee shall refer the application to the Commission and shall notify the Chapter accordingly; and section 9 shall apply to that application.

(11) Any application for approval in pursuance of section 2(3) shall be made to the Commission.

(12) Any application under this section shall be made in accordance with rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (1991 No. 1).

[7. Treasure]

8. Applications for approval of fabric advisory committee

(1) Where any application is made by the Chapter of a cathedral for the approval of the fabric advisory committee, the administrator shall display in the prescribed manner a notice in the prescribed form specifying the place where details of the proposal are available for inspection and stating that representations in writing with respect to the proposal may be sent to the secretary of the committee before the end of the prescribed period; and the administrator shall also send such a notice—

(a) to the Commission, and

(b) if the application relates to a proposal of a kind described in section 2(1)(a)—

(i) to English Heritage,

- (ii) to the national amenity societies (or such person as those societies may jointly appoint for the purposes of this section), and
- (iii) to the local planning authority.

(2) After considering any representations made to it under this section, the fabric advisory committee shall determine whether to give its approval to the proposal, either unconditionally or subject to such conditions as it may specify, or whether to refuse to give its approval.

(3) The secretary of the fabric advisory committee shall send a notice of the committee's decision—

- (a) to the Chapter of the cathedral,
- (b) to the Commission, and
- (c) to any body or person to whom notice of the application is required to be sent by virtue of subsection (1)(b),

and the administrator of the cathedral shall display in the prescribed manner a copy of the notice sent to the Chapter under this subsection.

9. Applications for approval of Cathedrals Fabric Commission

(1) Where any application is made by the Chapter of a cathedral for the approval of the Commission, the administrator shall—

- (a) display in the prescribed manner, and
- (b) send to the fabric advisory committee, English Heritage and the national amenity societies (or such person as those societies may jointly appoint for the purposes of this section),

a notice in the prescribed form specifying the place where details of the proposal are available for inspection and stating that representations in writing with respect to the proposal may be sent to the secretary of the Commission before the end of the prescribed period; and, if the application relates to a proposal of a kind described in section 2(1)(a), the administrator shall also send such a notice to the local planning authority.

(2) Following receipt of the notice referred to in subsection (1), the secretary of the fabric advisory committee shall inform the Commission in writing whether the committee has considered the proposal and, if so, of its views

(3) After considering any representations made to it under this section, the Commission shall determine whether to give its approval to the proposal, either unconditionally or subject to such conditions as it may specify, or whether to refuse to give its approval.

(4) Before determining whether to give approval to any proposal for the sale, loan or other disposal of an object falling within section 6(1)(a)(iv), the Commission may consult the Church Commissioners on any financial considerations (other than any which relate to the valuation of the object in question) which may be relevant to the proposal and on which the Commission considers it appropriate to receive the advice of the Church Commissioners and the Church Commissioners shall give such advice as they consider appropriate.

(5) Before determining whether to give approval to any proposal for the sale, loan or other disposal of an object falling within section 6(1)(a)(iv), the Commission may request the Chapter of the cathedral to—

- (a) consult the Council of the cathedral if it has not already done so; and
- (b) inform the Commission of the Council's views on the proposal.

(6) If a meeting is arranged between the Commission and the Chapter of the cathedral to discuss the proposal, the administrator shall notify the secretary of the fabric advisory committee of the meeting and the committee's representatives shall be entitled to be present at the meeting.

(7) The secretary of the Commission shall send notice of the Commission's decision—

- (a) to the Chapter of the cathedral,
- (b) to the fabric advisory committee,
- (c) to English Heritage,
- (d) to the national amenity societies (or such person as those societies may jointly appoint for the purposes of this section), and
- (e) if the decision relates to a proposal of a kind described in section 2(1)(a), to the local planning authority,
- (f) if the Commission has consulted the Church Commissioners on the proposal under subsection (4), to the Church Commissioners,

and the administrator shall display in the prescribed manner a copy of the notice sent to the Chapter under this subsection.

(8) This section shall apply in relation to an application for approval in pursuance of section 2(3) as it applies in relation to an application for approval of a proposal.

10. Appeals to Cathedrals Fabric Commission

(1) Where, on an application made by the Chapter for the approval of the fabric advisory committee, approval is refused or is given subject to conditions, the Chapter may within the prescribed period appeal to the Commission.

(2) Where, on an application made by the Chapter for the approval of the fabric advisory committee, the application is not determined by the fabric advisory committee with the period of 3 months immediately following the making of the application, the Chapter may, by notice given within the prescribed period to the Commission, request that the application be dealt with by the Commission.

(3) The Commission, on considering an appeal under subsection (1), may reverse, confirm or vary the decision of the fabric advisory committee or any part of it.

(4) The Commission, on dealing with an application for approval under subsection (2), shall, after considering any representations made to the fabric advisory committee under section 8, determine whether to give its approval to the proposal, either unconditionally or subject to such conditions as it may specify, or whether to refuse to give its approval; and any such

determination shall have effect as if it had been given by the fabric advisory committee, except that subsection (1) shall not apply in respect of the determination.

[11. Commission of Review]

12. Conditions applying to approval

(1) Any approval given to an application under this Measure shall lapse at the expiry of the period of ten years from the date on which notice of the decision is given to the Chapter, provided that the body which gave the approval may extend that period by such period as it may specify.

(2) As soon as possible after the completion of any work for which approval has been given, the administrator of the cathedral shall notify the fabric advisory committee or the Commission, as the case may be, of the date of the completion.

(3) In subsection (1) the reference to the date on which notice of the decision is given shall, in the case of an appeal to the Commission under section 10(1) or an application for review by a Commission of Review under section 11(1), be construed as a reference to the date on which notice of the decision of the Commission or, as the case may be, of the Commission of Review, is given to the Chapter.

(4) Subsection (1) shall apply to approvals given before 1st January 2008 as if for the reference to 10 years from the date referred to in that subsection there were substituted a reference to 1st January 2018.

13. Registers of applications

(1) The Commission and any fabric advisory committee shall each keep a register, in the prescribed form, of applications for approval dealt with by them and shall make such arrangements as are prescribed—

(a) for inspection of the registers by any person;

(b) for the supply, on application by any person, of extracts of that part of the register which relates to an application for approval specified by that person;

(c) for enabling the Commission or a fabric advisory committee to supply, if it thinks fit, copies of the whole register or further parts of it, on application by any person.

(2) The Commission or any fabric advisory committee may impose a fee of a reasonable amount for the supply of copies of or extracts from the register under subsection (1) and the amount charged may vary according to the circumstances.

[14. Right of appeal by tenant]

[15. Preliminary interview in regarding contravention of Section 2]

[16. Power of Bishop to order special visitation]

[17. Power of Bishop to give directions]

[18. Institution of proceedings for injunction or restitution order]

[19. Jurisdiction and composition of Vicar-General's court]

[20. Powers of court]

[21. Further powers of the CFCE]

22. General duties of approval bodies

The Commission, any fabric advisory committee and any Commission of Review shall, without prejudice to the duty imposed upon them by section 1, in exercising any function conferred upon them by the preceding sections of this Measure, have due regard to the desirability of preserving—

- (a) the fabric of the cathedral church and any features of architectural, archaeological, artistic or historic interest which it possesses;
- (b) the immediate setting of the cathedral church;
- (c) any building within the precinct of the cathedral church of architectural, archaeological, artistic or historic interest;
- (d) any archaeological or human remains in or under the cathedral church or within its precinct; and
- (e) any objects referred to in section 2(1)(b).

23. Provisions as to cathedral architects or surveyors of the fabric and cathedral archaeologists

- (1) It shall be the duty of the Chapter of a cathedral to consult the Commission before appointing a cathedral architect or surveyor of the fabric.
- (2) It shall be the duty of the Chapter of a cathedral after consulting the Commission to appoint a cathedral archaeologist, except in any case in which the Commission notifies the Chapter that in the view of the Commission the archaeological significance of that cathedral church does not justify such a appointment.

24. Inventories

(1) It shall be the duty of the Chapter of a cathedral, in accordance with rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, to compile and maintain an inventory of all objects—

- (a) the property in which is vested in the corporate body, or
- (b) which are in the possession or custody of the corporate body, or
- (c) to whose possession or custody the corporate body is entitled,

which the fabric advisory committee considers to be of architectural, archaeological, artistic or historic interest.

(2) The compilation of the inventory under subsection (1) shall be completed within such period as the Commission, after consultation with the Chapter and the fabric advisory committee, determines, being such period as it considers reasonable, having regard to the particular circumstances of each case, and different periods may be specified by the Commission for different parts of the inventory.

(3) The Chapter shall make an annual report to the fabric advisory committee on the contents of the inventory or on progress made in compiling the inventory, which shall, in particular, certify the accuracy of the inventory or any part of it which has been compiled and describe any alterations which have been made to the inventory during the 12 months preceding the report.

(4) It shall be the duty of the fabric advisory committee of a cathedral church to designate those objects included in the inventory compiled and maintained for the cathedral church under subsection (1) which the committee considers, after consultation with the Commission, to be of outstanding architectural, archaeological, artistic or historic interest.

[25. Precinct plans]

[26. Reports and inspections by cathedral architects or surveyors of the fabric]

27. Maintenance of records

The cathedral architect or surveyor of the fabric and the cathedral archaeologist (if any) shall each, in consultation with the architect or surveyor appointed under section 20 of the Cathedrals Measure 1999 (if a person other than the cathedral architect or surveyor of the fabric), include in the annual report required to be made to the Chapter under section 26(5) or 28(3) advice as to those works 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 cathedral archaeologist be maintained and it shall be the duty of the Chapter—

(a) to have regard to that advice and, pursuant thereto, to make and maintain appropriate permanent records of any such works; and

(b) during the period of 5 years beginning with 1st January 2008 and during every subsequent period of 5 years, to make a report in writing to the fabric advisory committee of the records made under paragraph (a) and on the arrangements for maintaining those records and to send a copy of the report to the Commission.

[28. Reports by cathedral archaeologists]

[29. Applications for listed building or scheduled monuments consent]

[30. Notices]

[31. Saving]

32. Interpretation

(1) In this Measure, unless the context otherwise requires—

- “administrator of the cathedral” means the person, by whatever name called, appointed under section 9(1)(e) of the Cathedrals Measure 1999;
- “archaeological remains” means the remains of any building, work or artefact, including any trace or sign of the previous existence of the building, work or artefact in question;
- “architect” means a person registered under the Architects Act 1997 (c. 22);
- “building” includes any monument or other structure or erection and any part of a building as so defined and “fabric” shall be construed accordingly;

- “cathedral archaeologist” means the person appointed under section 23(2), by whatever name called, being a person who possesses such qualifications and expertise in archaeological matters as the Commission may recognise as appropriate;
- “cathedral architect or surveyor of the fabric” means any architect or surveyor appointed by virtue of section 9(1)(f) of the Cathedrals Measure 1999 by whatever name called;
- “cathedral church” means any cathedral church in the provinces of Canterbury and York, except—
 - (a) the Cathedral Church of Christ in Oxford, and
 - (b) the cathedral church in the diocese of Sodor and Man;
- “Chapter” means the body of that name established by section 2 of the Cathedrals Measure 1999;
- “chartered building surveyor” means a member of the Royal Institution of Chartered Surveyors qualified as a chartered building surveyor;
- “corporate body” means the body established under section 9(1)(a) of the Cathedrals Measure 1999;
- “English Heritage” means the Historic Buildings and Monuments Commission for England, known as English Heritage;
- “Liturgical Commission” means the body so named at the passing of this Measure or any body subsequently exercising the functions of that body under a different name or with a different constitution;
- “local planning authority” in relation to any area means the body exercising the functions of a local planning authority under Part I of the Town and Country Planning Act 1990 in that area;
- “national amenity societies” means the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Twentieth Century Society and the Victorian Society and such other body as may from time to time be designated by the Dean of the Arches and Auditor as a national amenity society for the purposes of this Measure;
- “precinct” in relation to a cathedral church means the precinct for the time being indicated on the plan required for that cathedral church by section 25;
- “prescribed” means prescribed by rules made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991;
- “special visitation” means a special visitation under section 16.

(2) For the purposes of this Measure any object or structure permanently situated in or affixed to a cathedral church or any building within the precinct of a cathedral church shall be treated as part of that cathedral church or building or of its fabric, as the case may be.

(3) For the purposes of this Measure a building shall be treated as being used for ecclesiastical purposes if it would be so used but for any works proposed to be carried out in relation to it.

[33. Repeals]

[34. Short title and commencement]

[Schedule 1 CFCE]

SCHEDULE 2 - Fabric Advisory Committees

1 The fabric advisory committee shall consist of—

(a) not less than 3 nor more than 5 members appointed by the Chapter after consultation with the Commission not being members of the Chapter or persons who are employed or hold paid office in the cathedral; and

(b) not less than 3 nor more than 5 members appointed by the Commission after consultation with the Chapter, being persons having special knowledge with respect to the care and maintenance of buildings of outstanding architectural or historic interest and a particular interest in the cathedral church concerned.

The number of members to be appointed by the Chapter and by the Commission shall be the same in each case and shall be determined, on each occasion when the committee is appointed, by the Chapter after consultation with the Commission.

2 The committee shall appoint a person who shall be known as “the Chair” from among its members.

3 The dean of the cathedral, the administrator of the cathedral and such other members of the Chapter as the Chapter, after consulting the fabric advisory committee, considers appropriate, shall be entitled to attend, and to speak at meetings of the committee or such meetings of the committee as may be specified by the Chapter, but no such person shall be entitled to vote.

4 It shall be the duty of the cathedral architect or surveyor of the fabric and the person (if any) holding office as cathedral archaeologist to attend meetings of the committee unless the Chair permits or directs otherwise.

5 No person who holds any paid office in the Commission shall be eligible for appointment as a member of the committee.

6 The members of the committee shall hold office for a period of 5 years but shall be eligible for reappointment.

7 The committee shall appoint a person, whether or not a member of the committee, to be secretary of the committee, provided that, in the case of a member of the Chapter or a person who is employed or holds paid office in the cathedral, the committee shall have particular regard to the question whether there is any conflict of interests which would make it inappropriate to appoint that person as the secretary.

8 Any expenses properly incurred by a member of the committee for the purposes of this Measure shall be reimbursed by the Chapter of the cathedral.

9 Where a casual vacancy occurs among the members of the committee, the body which appointed the person whose place is to be filled may after carrying out the like consultation as was required when the appointment was made appoint a person to fill the vacancy, and

any person so appointed shall hold office for the unexpired portion of the term of office of the person in whose place he or she is appointed.

10 The quorum of the committee shall be—

(a) 6 members, if the membership of the committee is 10;

(b) 5 members, if the membership of the committee is 8;

(c) 4 members, if the membership of the committee is 6.

11 Subject to paragraph 10, the committee may act notwithstanding any vacancy in its membership.

12 The business of the committee shall be decided by a majority of the members present and voting thereon and, in the event of an equal division of votes, the Chair shall have a second or casting vote.

13 The committee shall hold not less than 2 meetings each year, and if 3 or more members, by notice sent to the secretary of the committee, request that a special meeting be held, such a meeting shall be held within 4 weeks of the sending of that notice.

14 The secretary of the committee shall place on the agenda for the next meeting any matter requested by any member of the committee.

15 The secretary of the committee shall before each meeting send to the Chapter and to the Commission a copy of the agenda for the meeting and shall after each meeting send to the Chapter and to the Commission a copy of the minutes of that meeting.

16 Subject to the preceding provisions of this Schedule, the committee shall have power to regulate its own procedure.

[Schedule 3 – Repeals]