

## **OTHER PLACES OF WORSHIP SUBJECT TO FACULTY JURISDICTION**

### **BACKGROUND NOTES FOR APPLICANTS**



#### **Introduction**

- 1      Until recently, the ‘Ecclesiastical Exemption’ from secular controls over buildings listed as being of special historic or architectural interest and over conservation areas applied to all ecclesiastical buildings for the time being used for ecclesiastical purposes. This exemption is now limited by the Ecclesiastical Exemption (Listed Buildings and Conservation Areas)(England) Order 2010 to those Churches that are recognised as having effective systems for controlling changes to historic buildings, and to the buildings that are subject to those systems of control. In the case of the Church of England, the exemption is now limited to cathedrals and to church buildings subject to the faculty jurisdiction.
  
- 2      Prior to this, there were certain buildings that were subject to the ecclesiastical exemption, but were not subject to any external system of control. These buildings fell under the following categories:
  - a)     A building which is subject to any peculiar jurisdiction and which is used for worship according to the rites and ceremonies of the Church of England.
  
  - b)     A building which is a chapel forming part of an episcopal house of residence of a Church of England bishop or archbishop.
  
  - c)     A building which is a chapel or other place of worship owned or leased by or held in trust for an Anglican religious community.
  
  - d)     A building (not falling with any of the above paragraphs) which is part of a university, college, school, hospital, Inn of Court, almshouse or other public or charitable institution and of which the primary use is for worship according to the rites and ceremonies of the Church of England or for joint worship by members of the Church of England and other Churches.
  
  - e)     A building which is subject to a sharing agreement made on behalf of the Church of England (and of another Church or other Churches) in pursuance of the Sharing of Church Buildings Act 1969 and which is used for worship.

- 3 In order to give the custodians of these buildings the option to come voluntarily within the faculty jurisdiction and thus continue to enjoy the Ecclesiastical Exemption, the General Synod passed the Care of Places of Worship Measure 1999. The provisions of that Measure are now found as paragraphs 38 to 44 (The list of places of worship) of the [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#).
- 4 Two pieces of subordinate legislation have been made:
- a) [The Care of Places of Worship Rules 1999](#) (which, in particular, lay down the procedure for making applications for inclusion in the new system, the material to be provided with the application and the contents of the list to be kept by the Church Buildings Council of the buildings brought within the new system ).
  - b) [The Faculty Jurisdiction Rules 2015](#) which lay down the procedure for faculty proceedings for cases falling under paragraphs 38 to 44 of the 2018 Measure.
- 4 Paragraphs 38 to 44 of the 2018 Measure provides for the Church Buildings Council (CBC) to hold a list (“the list”) of those buildings opting to come under the faculty jurisdiction under the Measure. The categories of buildings are eligible to be included in the list are those listed in 2 a-e above. Three points should be noted as regards these categories:
- a) “building” includes part of a building, where that part falls within one of the statutory categories;
  - b) where an application is or has been made for the inclusion of a building in the list, an application may also be made to include any adjoining building which is used wholly or mainly as a vestry or sacristy;
  - c) Where an application is or has been made in relation to a wholly detached building in category (a) or (e) in paragraph 2 (peculiar or shared buildings), an application may also be made to include in the list the curtilage of the building, any monument within the curtilage or any object or structure forming part of the land within the curtilage which is used wholly or mainly for purposes ancillary to the building. The provisions in the 1999 Measure relating to “buildings” will then apply to the curtilage, monument, object or structure. (Broadly, “curtilage” means a “small area” about a building, but what is a “small area” for this purpose depends on the facts of each case.)
- 5 The CBC is given no discretion under the 1999 Measure as regards inclusion in the list, and therefore all applications will be accepted provided they comply with the 1999 Measure and the Rules.

### **Effects of Inclusion on the List**

- 6 On being included in the list:
- ◆ The building and any object or structure fixed to it become subject to the faculty jurisdiction.
  - ◆ The building becomes subject to the provisions for the inspection of churches, paragraphs 45 to 48 of the [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#) (see paragraphs 11-14 below).
  - ◆ The building benefits from the ecclesiastical exemption.

Those responsible for buildings included on the list will therefore have to seek faculty approval for works affecting the building and the objects or structures fixed to it, including repairs, alterations (including new work), transactions, conservation, demolition, disposal and reordering. Such works may be implemented without faculty authorisation only if they are included in the Chancellor's written guidance on minor works that do not require a faculty.

### **Procedure for Making an Application for Faculty Permission**

- 7 Once a building is included on the CBC's list, it is recommended that early contact is made with the Secretary of the Diocesan Advisory Committee for the Care of Churches (DAC) to discuss any proposed application. It is normally necessary for proposals to be considered in the first instance by the DAC, which then issues a notification of advice to the applicants as to whether it recommends a proposal. Informal advice, particularly on major projects, is always available from the DAC before the formal application, and the DAC will often send a delegation to visit.
- 8 Once the DAC notification of advice has been obtained, the faculty petition form (which will be available from the Diocesan Registrar or DAC Secretary) should be completed and sent to the Registrar with the enclosures specified on the form, including specifications of work, drawings and the DAC notification of advice. A public notice must also be displayed so that local people have an opportunity to object. The Diocesan Registrar will, after checking the paperwork, refer the matter to the archdeacon (who in most dioceses exercises the jurisdiction of the consistory court in minor and uncontroversial cases), or to the chancellor, the judge of the consistory court. Directions may be given for further public notices of the proposal, or for notice to outside bodies such as Historic England, the local planning authority, one or more of the national amenities societies or the CBC.
- 9 The vast majority of applications for faculty permission, where recommended by the DAC, are granted. However, if the DAC does not recommend an application, if there is any objection, or in some other special cases, the Chancellor must determine the case judicially, either by way of written representations or, in a very few cases, by a hearing of the consistory court. A faculty may be granted subject

- to conditions, dealing with matters such as the manner in which works are to be carried out, professional supervision and so on.
- 10 There is legal provision for appeal against the judgment of a consistory court, and for enforcement in case of non-compliance.

### **The Inspection of Churches**

- 11 Paragraphs 45 to 48 of the [\*\*Ecclesiastical Jurisdiction and Care of Churches Measure 2018\*\*](#) (as amended) provides that each diocese shall establish a scheme for the inspection of every church at least once every five years by a suitably qualified person, who must report on the inspection. This provision extends to those buildings included in the list, with modifications and with the exception of bishops' chapels, which are inspected by the Church Commissioners.
- 12 Subject to any provisions of the scheme in force in the relevant diocese, the following action will be necessary in relation to a building included in the list:
- a) An suitable person must be appointed to inspect the building every five years. The DAC must be consulted for advice before the person is appointed.
  - b) Copies of the report on each inspection must be sent to the archdeacon (or in the case of a prison chapel, the Chaplain-General of Prisons), the Secretary of the DAC and the CBC.
- 13 The Secretary of the DAC in the relevant diocese will be able to give details of the diocesan scheme, the arrangements for fees, and the procedure for obtaining advice over the selection of the person chosen to carry out the inspection.
- 14 It is envisaged that many buildings opting to come under the faculty jurisdiction may already be subject to a regime of professional inspection, so this provision will often only involve some modification of an existing arrangement. However, it will be necessary for the form of inspection report to be in accordance with the requirements of the diocesan scheme.

### **Removal of Buildings from the List**

- 15 Any building which has been included on the list will be removed on application to the CBC in accordance with the Rules by those responsible for the building who were entitled to apply for the original inclusion in the list. The same provisions as regards consents apply as on inclusion in the list.
- 16 The CBC may also remove a building from the list, after giving the relevant person or body an opportunity to show reason to the contrary, in the following circumstances:

- a) Where the building is no longer eligible for inclusion;
- b) Where an order or direction of a court in connection with the faculty jurisdiction, or any undertaken given in connection with the application for inclusion, has not been complied with.

### **Further provisions relating to the list**

17. The entry on the list relating to a building will contain the following information as provided by the applicants on the form:
  - Details of the applicant(s); the capacity in which they are making the application; and information on the person authorised to act on behalf of the applicants in relation to the application;
  - The name of the building and its Ordnance Survey reference; details of whether it is part of a larger building; and whether any adjoining vestry/sacristry, curtilage or structure within the curtilage is to be included;
  - The category of building (school, hospital chapel etc)
  - An Ordnance Survey map or site-centred plan showing the location of the building, vestry, curtilage etc;
  - Whether the building is listed as being of architectural or historic interest, and whether it is in a conservation area;
  - A list of all objects and structures fixed to the building with a description sufficient to identify them.
- 18 As soon as a building is included in the list, the entry is sent to the diocesan registrar, the DAC, the Secretary of State, Historic England and the national amenity societies, and the list is also circulated to those bodies every five years.
- 19 The list will be open to public inspection at the CBC's offices, and any person is entitled to be supplied with a copy of an entry or document relating to a building.

### **Fees**

- 20 Fees are payable where an application for faculty permission is lodged with the Diocesan Registrar. The fees payable will vary depending on the work involved in dealing with each application, on which the Diocesan Registrar will advise in each case. Most applications will however involve at least the following fees:
  - ◆ £209, payable to the Diocesan Board of Finance, in respect of work carried out by the DAC and any work carried out by the archdeacon (not payable in the case of shared churches or Lambeth Palace).

- ◆ £212 in respect of a fee to the diocesan registrar on the submission of a petition for a faculty.

(Fees correct as at 1 January 2021).

The whole or part of first fee listed above may be waived by the Diocesan Board of Finance in a particular case where the Board considers that such a waiver is appropriate having regard to any financial contribution to the funds of the diocese made by those responsible for the building concerned, by those who worship regularly in the building and by any other persons who in the Board's opinion have a substantial interest in or connection with the building. In such cases it would therefore be appropriate to contact the Secretary of the Board to discover in what circumstances the Board would be prepared to waive the whole or part of the fee.