



department for  
**culture, media  
and sport**

# The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England

Guidance

July 2010

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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# Introduction

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1. Church buildings<sup>1</sup> make a significant contribution to the heritage and life of the nation, demonstrating the finest design, workmanship and decoration of their generation while representing the most recognisable features of our rural landscape and urban areas. Church buildings, in common with other buildings and structures, can be included on a list compiled by the Secretary of State that identifies those buildings which are assessed as being of special architectural or historic interest, and which, therefore, merit special protection measures. As is explained in this guidance document, listed churches within the heritage protection systems of certain denominations are largely outside the scope of normal listed building controls. We recognise that, in order to survive and to continue to serve their local communities, listed churches might need to adapt to meet changing liturgical preferences, and to meet the needs of today's worshippers and other users. The Government is committed to working closely with those denominations to make sure that they are able to make the right decisions about changes to their church buildings, accessing the best advice, and taking into account the legitimate views of the wider heritage world, without adding excessive new burdens. Planning Policy Statement 5 (PPS5) - Planning for the Historic Environment<sup>2</sup> (paragraphs 6 and 7) lays out the Government's objectives for planning for the historic environment including the overarching aim that the historic environment and its heritage assets should be conserved and enjoyed for the quality of life they bring to this and future generations.
2. The legislative framework for protecting the historic environment includes<sup>3</sup> the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Act"). The Act provides for buildings of special historic or architectural interest to be listed and managed through a formal consent system, administered by local planning authorities and, in the exercise of planning functions by local authorities, for special attention to be paid to the desirability of preserving or enhancing the character and appearance of conservation areas<sup>4</sup>.

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<sup>1</sup> The term 'church buildings' is used generically and includes all buildings whose primary use is as a place of worship, such as chapels and other places of worship.

<sup>2</sup> Planning Policy Statement 5- Planning for the Historic Environment, published by the Department for Communities and Local Government March 2010.

<sup>3</sup> the other main Acts are the Ancient Monuments and Archaeological Areas Act 1979 and the Protection of Wrecks Act 1973

<sup>4</sup> Conservation areas are designated under the Act as 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance'. They are, in the main, designated by local authorities, although English Heritage can designate them in London and the Secretary of State can designate in exceptional circumstances - usually where the area is of more than local interest

3. Many places of worship are listed buildings, or are situated in conservation areas, and the Act makes separate provision for their protection and management needs through the 'Ecclesiastical Exemption'. The Ecclesiastical Exemption provides a mechanism for certain denominations to be exempted from the listed building consent and conservation area consent systems administered by local planning authorities when undertaking works or making repairs to those listed or conservation area buildings under their control. Full details are set out in the Act and in the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010 (SI 2010 No 1176) (" the 2010 Order").
4. The Ecclesiastical Exemption is not an exemption from the need to obtain Scheduled Monument Consent from the Secretary of State, where applicable. However, Section 61 (8) of the Ancient Monuments and Archaeological Areas Act 1979 specifies that an ecclesiastical building for the time being used for ecclesiastical purposes cannot be scheduled as a monument, thereby exempting such buildings from scheduling. Nothing in the 2010 Order amends the legislation that covers the scheduling of monuments not the consents required for works to them. The Secretary of State's policy on scheduled monuments (and on nationally important, but non-scheduled archaeological sites) is published on the DCMS website<sup>5</sup>. Additional policy on their conservation through the planning system is set out in PPS5.
5. The 2010 Order, effective from 1 October 2010, revokes and replaces the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (the "1994 Order"). The 2010 Order was introduced:
  - to ensure that, apart from in a small number of special cases , all buildings subject to the Ecclesiastical Exemption are covered by the control mechanisms of the relevant exempt denomination; and
  - to reduce instances of 'dual control', where both denominational and local authority controls apply, by extending the Ecclesiastical Exemption to cover separately listed buildings and structures fixed to or in the curtilage of exempt church buildings, where they themselves constitute ecclesiastical buildings for the time being in use for ecclesiastical purposes.
6. The 2010 Order, and this guidance, now cover England only, whereas the 1994 Order and related guidance covered England and Wales. In Wales, the Welsh Assembly Government (Cadw) will be responsible for repealing the 1994 Order in respect of Wales, and for issuing guidance that applies to Wales. Until the Welsh Assembly Government (Cadw) repeals the 1994 Order in respect of Wales, it will continue to apply. We acknowledge and regret that this might cause some difficulty where denominational management arrangements and districts might cross the border between England and

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<sup>5</sup> Scheduled Monuments: Identifying, protecting, conserving and investigating nationally important archaeological sites under the Ancient Monuments and Archaeological Areas Act 1979 - [http://www.culture.gov.uk/what\\_we\\_do/historic\\_environment/4171.aspx](http://www.culture.gov.uk/what_we_do/historic_environment/4171.aspx)

Wales, but we do not expect that Ecclesiastical Exemption provisions will differ between England and Wales in the long term.

7. The Ecclesiastical Exemption reduces burdens on the planning system while maintaining an appropriate level of protection and reflecting the particular need of listed buildings in use as places of worship to be able to adapt to changing needs over time to ensure their survival in their intended use. It is widely acknowledged that keeping a building in use is more likely to result in the preservation, proper maintenance and sustainability of that building.
  
8. This guidance explains the operation of the Ecclesiastical Exemption. It replaces for England only at this time the 1994 booklet *The Ecclesiastical Exemption – What it is and How it Works*. It should be used by those denominations which are already exempt<sup>6</sup>, any denominations or faith groups which may seek coverage by the Ecclesiastical Exemption, local planning authorities, heritage protection professionals, and members of the public. It should be read alongside the Act, the 2010 Order, the Code of Practice (at Annex A), and Planning Policy Statement (PPS) 5- Planning for the Historic Environment. English Heritage may, from time to time, publish separate guidance on works to heritage assets.

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<sup>6</sup> We expect that those responsible for the consents mechanisms under the Exemption within the exempt denominations will be active in bringing the contents of this guidance to the attention of anyone within the denomination who might need to be aware of it.

## Who is exempt?

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9. The 2010 Order limits the Ecclesiastical Exemption to certain buildings<sup>7</sup> within the care of specified denominations which have demonstrated that they operate acceptable internal procedures for dealing with proposed works to listed ecclesiastical buildings and unlisted buildings in conservation areas. The internal procedures for such exempt denominations must be as stringent as the procedures required under the secular heritage protection system. Equivalence of protection is a key principle underpinning the Ecclesiastical Exemption and will be kept under review by the Department for Culture, Media and Sport, in order to ensure that those denominations which benefit from the Ecclesiastical Exemption maintain the required standards of protection.
  
10. Denominational systems of control need to be open and transparent. The systems should provide similar levels of consultation and engagement with local communities, and with the statutory consultees - planning authorities, English Heritage and the national amenity societies - as is required in relation to the secular control system and they must comply with the provisions of the Code of Practice (Annex A to this document).
  
11. The 2010 Order provides that the Ecclesiastical Exemption is retained for specified ecclesiastical buildings which are 'for the time being used for ecclesiastical purposes', belonging to<sup>8</sup> the following denominations in England : the Church of England; the Roman Catholic Church; the Methodist Church; the Baptist Union of Great Britain (and on occasions the Baptist Union of Wales) ; and the United Reformed Church.
  
12. Each of these denominations has documented procedures for managing changes to listed ecclesiastical buildings. Copies of the documentation are available from each denomination and should be available on denominational websites.

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<sup>7</sup> The meaning of "building" in the Order has the same meaning as "building" in section 91(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which is incorporated from the Town and Country Planning Act 1990. For the purposes of the Order a reference to a "building" or a "church building" includes reference to (a) any object or structure fixed to that building, and (b) any object or structure within the curtilage of that building which, although not fixed to that building forms part of the land.

<sup>8</sup> It is acknowledged that different models of 'ownership' of buildings exist within different denominations, and the term 'belonging to' is used generally to reflect the different models.

13. No other faiths or denominations currently benefit from the Ecclesiastical Exemption<sup>9</sup>. For all other denominations and faiths, applications for work to listed ecclesiastical buildings require listed building consent from the local planning authority in the same way as similar works to secular listed buildings. Conservation area consent for the demolition of unlisted buildings in conservation areas will also be required from the local planning authority (but see paragraph 48 regarding the demolition of closed Church of England churches under the Pastoral Measure) . Conservation area controls also extend to memorials, monuments and tombstones.
14. The Secretary of State retains the power under the Act<sup>10</sup> to bring within secular listed building or conservation area controls, by means of a further Order, any individual ecclesiastical building where it seems likely that potentially damaging works will be carried out without the necessary authorisation having been obtained under an exempt denomination's procedures.

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<sup>9</sup> The Church of Scotland retains the exemption in respect of its buildings situated in England.

<sup>10</sup> Section 60(5) of the Act says that The Secretary of State may by order provide for restricting or excluding the operation of the Exemption in such cases as may be specified



# Applying for coverage by the Exemption

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15. Any denomination or faith group not currently covered by the Ecclesiastical Exemption, but which thinks it should qualify to be exempt, is free to make representations to the Secretary of State in support of exemption. Any such group will need to demonstrate that it has established or will establish sufficiently robust and transparent heritage protection procedures and is strongly advised to contact the Department for Culture, Media and Sport at an early stage in order to ensure that such internal systems will meet the necessary requirements. In considering whether the Ecclesiastical Exemption should be extended to any further denominations or faith groups in England, the Department will consult English Heritage, the National Amenity Societies and representative bodies of local authorities. Please note that any extension of the Ecclesiastical Exemption to cover a new denomination or faith group will require an amendment to the 2010 Order.

## What is exempt?

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16. Section 60 of the Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to certain provisions of the Act<sup>11</sup>. These provisions are subject to section 60(3) of the Act, which provides that the exemption does not apply to a building which is used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office. The 2010 Order restricts the operation of the Ecclesiastical Exemption to specified buildings within each exempt denomination. In respect of all exempt denominations, listed buildings whose primary use is as a place of worship (referred to as church buildings), and other separately listed structures attached to or within the curtilage of a listed church building, which themselves constitute ecclesiastical buildings for the time being in use for ecclesiastical purposes, will retain the exemption. "Ecclesiastical purposes" is not defined in the Act, but we would consider it reasonable that the definition could cover, and thereby allow the Ecclesiastical Exemption to cover such structures as campaniles, chest tombs, parish halls or rooms, school rooms, charnel houses, lychgates or boundary walls. This list is not exhaustive, and congregations may need to establish with local authorities in advance of any works that they agree that the Ecclesiastical Exemption applies to any given structure, but it would be for a civil court to decide in the event of a dispute. The Ecclesiastical Exemption applies to the full extent of a building as identified on the statutory list, and for the purposes of the 2010 order includes (a) any object or structure fixed to that building, and (b) any object or structure within the curtilage of that building which, although not fixed to that building, forms part of the land.
17. In the case of Church of England Cathedrals, the Ecclesiastical Exemption applies to (i) those buildings situated within a 'red line', inscribed on a map and agreed between the Department and each Cathedral, which are ecclesiastical buildings for the time being in use for ecclesiastical purposes; (ii) church buildings within the Cathedral's precinct, including any separately listed structures attached to or in the curtilage of those church buildings'; (iii) monuments within the Cathedrals precinct and situated in a place of burial. Red line plans were agreed and fixed in 1994 after consultation with Cathedrals Fabric Commission for England, and are not currently changing. Any changes to red line plans would require an amendment to the 2010 Order. Red line plans are available to view at relevant local authorities, DCMS, or at the Cathedral and Church Buildings Division of the Church of England.

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<sup>11</sup> The provisions of the Act covered by the Exemption are; 3 (temporary listing- building preservation notices, 4 (temporary listing in urgent cases), 7 to 9 (the need for local authority consent to works, and associated offences), 47 (compulsory acquisition), 54 (urgent works), 59 (damage to listed buildings) and 74 (control of demolition in conservation areas).

18. The Ecclesiastical Exemption only applies where works are covered by the internal control procedures of the exempt denomination. Where works are not covered by the internal procedures of the denomination, they are not subject to the Ecclesiastical Exemption and will require listed building consent from the local authority. Other than those works under the Church of England's Faculty or Care of Cathedrals procedures, works will only be exempt when (a) they are carried out on behalf of the denomination, or (b) the structure forms part of a university, college, school, hospital or public or charitable institution, and where the works are carried out on behalf of the governing body or the trustees of that institution (but see paragraphs 19-22 regarding the position of institutional chapels under the Ecclesiastical Exemption).
19. Under the 1994 Order (article 6), a range of buildings ('Peculiar and Special cases') were granted the Ecclesiastical Exemption even though they were not covered by denominational systems of control. These buildings were: buildings within a peculiar of the Church of England; chapels used according to the rites of an exempt denomination situated at one of a range of public institutions such as schools, colleges, universities, hospitals or prisons; the buildings of religious communities; churches subject to sharing agreements under the Sharing of Church Buildings Act 1969 and used by one or more of the exempt denominations; and churches in England belonging to one of three Scottish denominations.
20. Under the 2010 Order, the Ecclesiastical Exemption no longer applies to many of the "special cases" exempted under the 1994 Order. Those buildings that remain exempt while outside denominational controls are: (a) buildings in England belonging to the Church of Scotland, whose continued exemption is required under the terms of the Church of Scotland Act 1921, but which buildings are in any case covered by equivalent procedures of the Church of Scotland; (b) Westminster Abbey and St George's Chapel, Windsor, whose Fabric Commission and Fabric Advisory Committee respectively are considered to exercise equally stringent control to secular controls; and (c) on an interim basis, Christ Church Cathedral, Oxford, which will be brought under the jurisdiction of the Cathedrals Fabric Commission for England (CFCE) when a legislative opportunity arises to amend the Care of Cathedrals Measure 1990. Christ Church Cathedral will, in the meantime, establish a Fabric Advisory Committee according to the provisions of the Code of Practice, and will informally consult the Cathedral and Church Buildings Division of the Archbishops' Council over works.
21. Upon the coming into force of the 2010 Order, any other building currently exempt by virtue of article 6 of the 1994 Order will no longer be covered by the Ecclesiastical Exemption unless it becomes subject to the controls of the relevant exempt denomination.

22. Under the Church of England's Care of Places of Worship Measure 1999<sup>12</sup>, it is possible for certain buildings to be opted into the Church of England's faculty jurisdiction voluntarily. The policy intention is that any buildings which have been opted into the faculty jurisdiction will be subject to the Ecclesiastical Exemption. However, where the coverage of any specific building is in dispute, it is for a civil court to decide whether the Ecclesiastical Exemption applies. The buildings that can be opted into the faculty jurisdiction are:
- (a) buildings subject to any peculiar jurisdiction used for worship according to the rites and ceremonies of the Church of England;
  - (b) chapels forming part of an episcopal house of residence;
  - (c) chapels or other places of worship owned or leased by or held in trust for a religious community;
  - (d) buildings which are part of a university, college, school, hospital, Inn of Court, almshouse or other public or charitable institution where 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) buildings subject to a sharing agreement made on behalf of the Church of England in pursuance of the Sharing of Church Buildings Act 1969 [1969 c. 38.] and which is used for worship.
23. Listed church buildings belonging to Roman Catholic religious orders in England fall within the scope of the exemption on the assumption that they are subject to the relevant Diocesan (or multi-Diocesan) Historic Churches Committee, unless an order has specifically informed the Patrimony Committee of the Catholic Bishops' Conference of England and Wales that it accepts that secular control procedures administered by the local planning authority in whose area the building is located apply.

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<sup>12</sup> Care of Places of Worship Measure 1999 (1999 No. 2)

# How does it work? Planning, Conservation Area and Listed Building Consents

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24. Under the Act, buildings may be listed as being of special architectural or historic interest. Listing descriptions may be accessed online at the Heritage Gateway ([www.heritagegateway.org.uk](http://www.heritagegateway.org.uk)). To qualify for the Ecclesiastical Exemption, the structure in question must be included on the statutory list, or, in the case of demolition of an unlisted Church of England church under the Pastoral Measure, situated within a conservation area.
25. Conservation areas are normally designated or extended by local planning authorities. In Greater London, they may also be designated by English Heritage. They can also be designated by the Secretary of State. Details of conservation areas for any particular local authority area may be inspected at the offices of the local authority concerned. The Ecclesiastical Exemption is an exemption also from the requirement to obtain conservation area consent. Exempt denominations are required to seek conservation area consent for demolition of unlisted buildings in conservation areas, but conservation area consent is not required for demolitions pursued under the Pastoral Measure- see paragraph 48.
26. Under the Care of Churches and Ecclesiastical Jurisdiction Measure<sup>13</sup>, it is provided that a consistory court can only grant a faculty for the demolition or partial demolition of a Church of England church on certain grounds. It is required that, inter alia, the registrar gives notice in writing to the Secretary of State. The Secretary of State in this case is that for Communities and Local Government (CLG). CLG have devolved related casework to the Government Offices in the Regions, to which such notifications should be sent.
27. The Ecclesiastical Exemption does not exempt denominations from the need to obtain planning permission for development which affects the exterior of a listed place of worship or of an unlisted place of worship in a conservation area<sup>14</sup>. Planning authorities and the Secretary of State are required to have special regard to the desirability of preserving the structure or its setting or any features of special architectural or historic interest which it possesses when considering whether to grant planning permission for any development which affects a listed building or its setting, including listed buildings

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<sup>13</sup> Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (No. 1)

<sup>14</sup> Planning Permission is also needed for a change of use of a church building to a use which falls outside planning class D1 for places of worship, or is not directly related to a church's charitable activities. This should be taken into account when a new use is being considered for a part of a Church of England church building where the church has been made partially redundant under the Pastoral Amendment Measure.

subject to the Ecclesiastical Exemption. They also need to have regard to the desirability of preserving or enhancing the character or appearance of a conservation area.

28. Under the Act, the local planning authority's consent is normally needed for the following works ('relevant works') to listed buildings not covered by the Ecclesiastical Exemption:
- (a) any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest<sup>15</sup>.
  - (b) any works to a secular listed building which might affect its setting or any features of special architectural or historic interest which it possesses.
29. Generally the Ecclesiastical Exemption applies to all types of works which would otherwise require listed building consent, as set out above. However, this principle does not apply to total demolition of an asset as, where total demolition is taking place, it has been held that the asset cannot be considered as being in ecclesiastical use<sup>16</sup>.

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<sup>15</sup> s7, Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>16</sup> AG ex rel Bedfordshire CC v Howard URC [1976] AC 363

## Denominational consent procedures

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30. The requirements for internal denomination consent procedures are set out in the Code of Practice at Annex A to this document. The essential requirement of such procedures is equivalence with secular listed building consent in terms of due process, rigour, consultation, openness, transparency and accountability. To remain within the Ecclesiastical Exemption, denominations will have to demonstrate that they are complying with the Code of Practice. The Code of Practice requires that exempt denominations publish details of their internal systems of control.
31. Applications for consent should be made, and consent received, prior to the commencement of works. In common with secular controls, however, denominational consent procedures can include provision for the receipt and consideration of applications for consent after work has commenced and in some cases after work has completed. We would expect retrospective consents to be given only in exceptional circumstances. Further, applications for consent to works already undertaken should not be used as a way of circumventing controls - a rigorous assessment and consultation should take place even when works have already commenced. Where works have already commenced but retrospective consent is refused, we would expect denominations to have controls in place to make sure works are reversed or altered to meet relevant standards, and denominations should ensure the reinstatement of any works that have not achieved the standards needed. Where proposals for works would have been rejected if made before works commence, retrospective applications for consent to the same work should be similarly rejected.

# Essential Practice for Conservation and Archaeology

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32. Best practice in conservation and archaeological practices is not enshrined in the 1990 Act, and is not, therefore part of the Ecclesiastical Exemption.
33. Legal requirements relating to Scheduled Monuments and Areas of Archaeological Importance are set out in the Ancient Monuments and Archaeological Areas Act 1979. The Secretary of State's policy on the protection and conservation of scheduled monuments (and on nationally important, but non-scheduled archaeological sites) is published on the DCMS website<sup>17</sup>. Additional policy on their conservation through the planning system is set out in PPS5. However, we consider it appropriate to set out some broad principles regarding the standards of care expected of denominational systems of control.
34. In addition to complying with the requirements of the Code of Practice, the following general principles should be applied when carrying out work to any historic ecclesiastical building, whether or not it is listed and whether or not it is covered by the Ecclesiastical Exemption. Proposals for works should:
- be based on a full but proportionate analytical understanding of, and respect the historic, archaeological, architectural or artistic interest of the building, its contents and setting<sup>18</sup>;
  - be founded on a clearly stated, demonstrable and sustainable, medium to long term need;
  - minimise intervention in or alteration or removal of significant historic fabric, features or furnishings; and
  - achieve high standards of design, craftsmanship and materials.
35. In all cases, decisions about proposals and works should be based on a balanced judgement between the

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<sup>17</sup> Scheduled Monuments: Identifying, protecting, conserving and investigating nationally important archaeological sites under the Ancient Monuments and Archaeological Areas Act 1979 - [http://www.culture.gov.uk/what\\_we\\_do/historic\\_environment/4171.aspx](http://www.culture.gov.uk/what_we_do/historic_environment/4171.aspx)

<sup>18</sup> Paragraph HE 6.1 of PPS 5 states: 'Local planning authorities should require an applicant to provide a description of the significance of the heritage assets affected and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage asset and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset.' This introduces the need for proportionality which, however, should not be to the detriment of the significance of the heritage asset.



need for the works proposed and the significance of the structure or feature which would be altered or lost. Historic buildings are a finite resource and are irreplaceable. Their significance can be damaged just as much by unsympathetic alteration as by works of demolition. Government policy, as set out, in England, in Planning Policy Statement 5: Planning for the Historic Environment, lays out that where a development proposal has a negative impact on the significance of a heritage asset, through alteration or destruction, or through development within its setting, the local planning authority should weigh the public benefits of the proposed development against any harm it has on the heritage asset, recognising that the greater the harm to the significance of a heritage asset the greater the justification will be needed for any loss<sup>19</sup>. It emphasises the need to protect heritage assets from unnecessary demolition or unsuitable and insensitive alteration but does not in itself rule out the possibility of change. Indeed, in many cases it is only through continued use, which may necessitate gradual managed change, that the long-term conservation of assets can be best assured. What it does ensure, however, is that when change is contemplated, those responsible for making decisions have special regard to the desirability of preserving the asset, its setting and any special features that it may possess.

36. Reference should be made to PPS 5 Policy HE1 concerning Government policy on heritage assets and climate change. It provides that local planning authorities, where applications are received for consent to works to mitigate climate change, but which could have a negative impact on heritage assets, should assist in the identification of feasible solutions that cause less or no harm to the significance of the historic asset and its setting. Exempt denominations should seek to develop the expertise to reach similar solutions. PPS 5 also provides that (HE1.3) where conflict between climate change objectives and the conservation of heritage assets is unavoidable, the public benefit of mitigating the effects of climate change should be weighed against any harm to the significance of heritage assets in accordance with the developments management principles of PPS5 and national planning policy on climate change.
37. The principles outlined above about loss of significance to heritage assets also relates to the disturbance of archaeological remains. When works take place which bring about such disturbance, those responsible for the works must make arrangements for any mitigation and recording required by denominational control bodies, which are expected to require the same rigour to be exercised as would apply in secular systems. The costs of necessary archaeological work should be included in overall project costs.
38. In considering proposals for works which would affect archaeology, denominations must therefore take into account any effects on the archaeological importance of the asset or archaeological remains existing within, or likely to exist within it or its surrounding land. It is important that exempt denominations assess the archaeological implications of development proposals before applications are determined, and

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<sup>19</sup> PPS 5, paragraph HE 9.1.

that appropriate arrangements are made for recording remains that would be lost in the course of works for which permission is being sought. It should be noted, however, that recording is not enough in isolation to justify works which would disturb archaeological remains. It is also important that, when works are being carried out to the fabric of ecclesiastical buildings which might reveal features of archaeological interest or shed light on the history and development of the building, appropriate provision is made for archaeological recording of that part of the building. Further advice on archaeological aspects is given in the guidance to the Planning Policy Statement 5: *Planning for the Historic Environment* and related documents.

# Pre-application discussion

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39. Pre-application discussion is one of the best ways of managing the development of a site to ensure that heritage protection issues are properly addressed, without unduly hindering development. Exempt denominations should build such consultation into their processes, to be used where the scale of the works renders it appropriate. Consultation with external stakeholders at as early a point as is reasonably possible should provide congregations and church authorities with greater certainty in their plans for works of any sort. Early consultation minimises the likelihood of frustrating delays at the point of formal application for approval by ensuring that plans are developed on the basis of considered advice, and could result in reduced costs in professional fees, for example in saving the cost of formal plans for unjustifiable schemes.

# Heritage Partnership Agreements

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40. Heritage Partnership Agreements (HPAs), involving owners, local planning authorities, English Heritage and amenity societies where appropriate, working together, can assist in the management of complex sites or groups of sites. HPAs are voluntary management agreements which will facilitate partnerships and dialogue between stakeholders, can speed up negotiations and reduce administration, and can help owners and managers to clarify their plans for the longer-term management of sites. An HPA can set out, amongst other things, shared understanding of the significance of the heritage asset or assets and can particularly help by establishing at the outset what is not of special interest in listed buildings (i.e. those parts that can be altered without detriment to the significance). . Reaching an agreed, and fuller, understanding of significance will reduce areas of doubt or confusion and increase the prospect of success for a consent application where it is still required.
41. Studies have shown that there may be scope among the exempt denominations for such HPAs, and that they may allow greater flexibility for individual congregations in the management of ecclesiastical sites. While church buildings and the separately listed structures adjoined to them or in their curtilage (where these constitute ecclesiastical buildings in ecclesiastical use) are exempt from secular listed building controls, HPAs can make the management of any non-exempt structures easier by securing the views of English Heritage, the local authority and the national amenity societies, as statutory consultees, in advance of works and establish parameters which could enhance mutual understanding of the consent process.

# Historic Environment Records

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42. Historic Environment Records (HERs) are records which provide information on the historic environment of a particular locality for public and professional benefit and use. They play a central role in informing the management of the wider historic environment, both within the planning system and in other management systems, and should be an important public and educational resource for denominations operating systems under the Ecclesiastical Exemption. It is therefore vital that the exempt denominations build up links with Historic Environment Records. These are at various levels within local government, though in England they tend to be at the highest level available (for instance, at county or metropolitan borough level). Contact details for all HERs in England can be found on the Heritage Gateway ([www.heritagegateway.org.uk](http://www.heritagegateway.org.uk)).
43. PPS 5 makes it clear that local planning authorities should consult Historic Environment Records when determining applications affecting heritage assets<sup>20</sup>. It is important that the systems run by the denominations take account of the need to seek information from the local HER as soon as possible after receiving an application for works or development. It is preferable that this consultation is undertaken by the applicants themselves at the pre-application stage in order to help shape their proposals; this will highlight previous investigations of the site, other structures (including non-designated structures) which may be affected by the works and any other considerations.
44. Following works, copies of any reports concerning historical or archaeological investigations of the site should be deposited with the local HER, including investigations undertaken as a condition of any consents, both internal to the denominations or external. This will help to disseminate knowledge of the site and will inform anyone undertaking work on the site in the future.

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<sup>20</sup> PPS 5, para HE7.1.

## Closed Or Closing Places of Worship

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45. A Church of England church is fully subject to the normal listed building and conservation area controls once it is closed for regular public worship under the Pastoral Measure 1983. For the other denominations- the Roman Catholic Church, the Methodist Church, the United Reformed Church and the Baptist Union- exemption ceases and local authority controls apply from when a building ceases to be in use for worship, i.e. following a final service. Secular controls also cover buildings vested in the Churches Conservation Trust, in most of which church services are still held on an occasional basis.
46. For the Church of England, local authority controls may apply should a diocesan board of finance consider it necessary to remove fixtures for safe keeping under section 49(2) of the Pastoral Measure during the use-seeking period between a declaration of closure for regular public worship under the Pastoral Measure and the coming into operation of a pastoral (church buildings disposal) scheme. For other denominations, whether exempt or not, where fixtures or fittings are being removed from a closed listed church building, where this work would affect the character of the building, local authority consent may be required. It would be up to the local authority to agree what the listing of the building covers.
47. It should be noted that, when the Ecclesiastical Exemption ceases to apply, a local authority's powers under section 54 of the Act, to execute any works which appear to them to be urgently necessary for the preservation of a listed building, will apply to church buildings of the exempt denominations. The local authority can then seek repayment of the cost of such repairs under section 55 of the Act, although the owners of a building have the right of appeal to the Secretary of State against repaying some or all of the costs. Under section 47 of the Act, the Secretary of State can authorise the compulsory purchase by a local authority of a listed building, where it appears that proper steps are not being taken to properly preserve that building. Please see footnote 11 for the full range of provisions of the Act covered by the Exemption which will apply when a building is no longer in use for worship.
48. For Church of England church buildings which are closed for regular public worship, total demolition in pursuance of a pastoral church buildings scheme or a pastoral (church buildings disposal) scheme within the meaning of the Pastoral Measure 1983 is exempt from listed building control by virtue of section 60 (7) of the Act, and from conservation area control by a direction under section 75 (2) . However, the

Church Commissioners have agreed to ask the Secretary of State<sup>21</sup> whether he wishes to hold a non-statutory public local inquiry into any such proposal for total or partial demolition (which would otherwise fall within the scope of those controls) where English Heritage, the Statutory Advisory Committee of the Church Buildings Council, the local planning authority or a national amenity society have lodged reasoned objections. The Church Commissioners have also undertaken to accept a recommendation from the Secretary of State following such an enquiry that the church is of sufficient importance to be vested in the Churches Conservation Trust or, in cases where the recommendation was not that the building should go to the Trust, to make further efforts to find an alternative use and to engage in further consultation with the Secretary of State before using the Pastoral Measure powers to demolish. In considering what recommendation to make, the Secretary of State will take into account the financial implications of retaining a church building as well as the architectural and historic interest of the church, and other planning and social factors, and will consult accordingly. These arrangements are known as the 'Skelmersdale Agreement'. Additionally, the Church Commissioners have agreed to consult listing officials at DCMS as to whether an application has been received to list an unlisted church building outside a conservation area, where objections have been received against a draft scheme under the Pastoral Measure 1983 providing for the demolition of that building. This will apply where such objections could, if the building were listed, trigger a non-statutory public inquiry.

49. Church buildings of all denominations, when no longer required for worship, may have a continuing and valuable contribution to make to the community in terms of architecture, art, social and local or national history. They often occupy central and convenient positions in villages and towns and could offer suitable venues for a variety of social and community purposes, such as meetings, concerts, exhibitions, indoor sports and evening classes. Even where the building itself is not worthy of individual listing as of architectural or historic interest, it may nevertheless be a familiar and important feature of an urban or rural landscape - while a surrounding churchyard may possess considerable historical and ecological interest.
50. It is important that once a church becomes redundant no unnecessary delay should occur in finding an alternative use for it. The overriding aim of all parties should be to identify the optimum viable use<sup>22</sup> for a building compatible with the significance of the fabric, interior and setting of the closed church. As large open interiors they can often be conserved intact for the communal uses mentioned above or for other uses, rather than sub-divided. Such sub-division would have a major impact on a churches' significance and conservation intact should therefore generally be preferred. The use of pods and other design devices are useful in allowing the entirety of the space to be read.

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<sup>21</sup> That is the Secretary of State for Communities and Local Government

<sup>22</sup> The optimum viable use of a heritage asset is one which is economically sustainable in funding future maintenance but which also maintains significance. It is therefore viable, not just for the owner but also for the future conservation of the asset. See paragraphs 87-90 of the Practice Guide to PPS 5 for further information on optimum viable use.

51. A small number of specialist national bodies exist for the purpose of preserving redundant church buildings. The Churches Conservation Trust takes into care the most significant Church of England churches no longer needed for regular parish use (decisions as to which churches are vested in the Trust fall to the Church Buildings (Uses and Disposals) Committee of the Church Commissioners). The Historic Chapels Trust takes into care significant non-Conformist chapels and Catholic churches, and the Friends of Friendless Churches can take ownership of former places of worship in England and Wales.



## Additional Guidance

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52. Further guidance on works to churches and churchyards can be found in English Heritage’s publication *New Works to Historic Places of Worship* and in *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England*, published by English Heritage and the Church of England. Further advice on the archaeological aspects of burial grounds is available from the Advisory Panel on the Archaeology of Christian Burials in England (APACBE)<sup>23</sup>.
53. English Heritage has published *Conservation Principles, Policies and Guidance* which sets out the fundamental propositions for the way it engages with the historic environment. The Principles are intended primarily for use by English Heritage, in guiding both the management of its own estate and its advice to others. It is hoped, however, that they will be used by all those concerned with managing the historic environment, such as conservation and planning officers and the councillors of local planning authorities, and those proposing and influencing change, such as developers and their professional agents and the amenity societies.
54. Each exempt denomination publishes its own guidance relating to the care of buildings and the navigation of its internal systems of control on its website.
55. Denominations should be aware of and follow the guidance on the management of the historic environment found in Planning Policy Statement 5: *Planning for the Historic Environment*, the accompanying Planning Practice Guide, or equivalent future guidance.

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<sup>23</sup> See [www.britarch.ac.uk/churches/humanremains](http://www.britarch.ac.uk/churches/humanremains)



# Annex A: Code of Practice

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This guidance replaces in England that issued by the then Department for National Heritage and Cadw in 1994.

A denomination's internal system of control over works to its listed buildings should embody the following principles:

1. All proposals for internal and external works to a listed church, churchyard and/or churchyard structure, which would affect their character as a building of special historic, archaeological, architectural or artistic interest should be submitted for approval to a body or person independent of the local congregation or community proposing the works in question.<sup>24</sup>
2. The decision-making body, when considering proposals for works, should be under a specific duty to take into account, along with other factors, the desirability of preserving ecclesiastical listed buildings, the importance of protecting features of special historic, archaeological, architectural or artistic interest and any impact on the setting of the church.
3. The decision-making body should either include, or have arrangements for obtaining advice from, persons accredited to relevant professional standards in conservation, archaeological and planning matters.
4. The decision-making process should make provision for:
  - (i) a system of pre-application consultation to ensure that the main issues in any application for consent for major works are understood and any problems identified prior to applications for consent being made; and
  - (ii) the formal notification of proposals to the local planning authority, English Heritage<sup>25</sup> and the national amenity societies after a complete application has been made to the denomination, together with supporting information, at as early a point in the consent process as possible; allowing them (except in cases of emergency) 28 days in which to comment on the proposed works. Any representations made by these bodies or any other person in relation to such proposals should be taken into account before the decision on works is made. The level of detail should be proportionate to the importance of the heritage asset, and no more than is sufficient to understand the potential impact of the proposal on the significance of the asset.

Supporting information should include:

- a plan to identify the building in question and such other plans and drawings as are necessary to describe the works proposed. For all but the simplest work, this will normally

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<sup>24</sup> The exemption does not remove the need to obtain scheduled monument consent for work to scheduled ancient monuments.

<sup>25</sup> In line with its policy concerning other buildings, English Heritage has indicated that it only wishes to be consulted in the case of works to churches listed at Grade II where demolition of all or a substantial part of the interior of the structure is involved. Consultation is necessary for all works to Grades I and II\* buildings.

- mean measured drawings of all floor plans and external or internal elevations affected by the work proposed;
- statements outlining the significance of the asset, why the works are needed and what they are designed to achieve;
  - two sets of drawings showing the structure before work and the altered structure or new development to replace it after the proposed work;
  - photographs of all elevations in demolition cases or of the part of the buildings affected (interior or exterior) in alteration or extension cases;
  - a copy of the listing entry;
  - a statement showing how the significance of the site would be affected by the proposal(s), allowing an understanding which can be used by the denomination to avoid or minimise conflict between the conservation of the building and its setting and any aspect of the proposals<sup>26</sup>; and
  - any other details as appropriate- e.g. archaeological assessments, conservation reports on the buildings, its elements or fittings, paint analysis, ecological statements, etc.
- (iii) except in the case of works to the interior of a Grade II listed building, a notice describing the proposed works, and inviting comment from any interested person, to be published in a local newspaper, indicating where a copy of the application, plans and other documents can be inspected for 21 days, beginning with the date of publication of the notice. A notice with the same particulars should be displayed on or near the building for not less than 7 days. A decision on the application should not be made until 21 days from the date of the newspaper notice and 21 days from the date a notice was placed on or near the building have elapsed<sup>27</sup>;
- (iv) taking into account any representations made (including any received following the notifications given at (ii) and (iii) above) and, along with other factors, the desirability of preserving listed places of worship, the importance of protecting features of architectural merit and historic interest (including fixtures and fittings) and any impact on the setting of the building;
- (v) granting conditional consents, with a mechanism for checking the implementation of those consents and discharging the conditions;
- (vi) keeping a record of how a denomination's procedures were implemented in the case of each proposal, from whom representations were received, what the decision was, the reasons for the decision and any conditions imposed, with this record being available for public inspection during reasonable hours. Online records should be used where possible;
- (vii) where consulted, and a response has been received, notifying the decision to English Heritage, the local authority and the national amenity societies, within 14 days; and
- (viii) where appropriate, submitting information on the listed building to the local Historic Environment Record (HER) to ensure that the HER represents as complete a record as possible of local heritage interest. Submissions should cover information on all heritage assets, as appropriate, including information on all archaeological and historic investigations on such assets. The use of electronic submission is encouraged.

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<sup>26</sup> Statements describing the significance of the heritage assets affected and the contribution of their setting to that significance, and of the need for the works proposed, are useful to avoid or minimise conflict between the churches' conservation and the impact of proposals for change. However, the use of such statements should be proportionate to the understanding and the significance of the heritage asset and to the impact of the proposal on that significance. See paragraph HE 6.1 of PPS 5.

<sup>27</sup> These requirements mirror those that apply to secular buildings as enshrined in Regulation 5 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (SI 1990/1519)

5. The denomination will publish the details of the procedures used to agree works in relation to the provisions of this Code of Practice including details of any works which can be undertaken without application for consent. To permit effective monitoring, the church body should make arrangements for recording in the case of each proposal for works how the procedures were implemented and the nature of the decision taken.
6. There should be a clear and fair procedure for settling all disputes between the local congregation or community and the decision-making body as to whether proposals shall proceed.
7. The procedures of the church body should include arrangements for dealing with any breach of the control system, including provision for reinstatement of works to listed buildings carried out without consent. Enforcement and penalty procedures will be published, with copies of the procedures provided to local planning authorities, English Heritage, and the national amenity societies.
8. In cases of emergency (i.e. in the interests of safety or health or the preservation of the structure) advance notification is expected wherever practicable as at 4 (ii) and (iii) above but on an appropriate shorter timescale.
9. It is desirable that denominations ensure, for the benefit of buildings and congregations, that arrangements exist to ensure the proper maintenance of historic places of worship and associated assets, including provision for regular inspections.
10. It is important that exempt denominations have procedures providing for the redundancy of churches, making clear how and when the ecclesiastical listed buildings pass out of the Ecclesiastical Exemption, including informing the local planning authority when a structure ceases to be used or available for worship, or ceases to be covered by a denomination's procedures.



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