



## INSTITUTE OF HISTORIC BUILDING CONSERVATION

David Hall  
Architecture and Historic Environment Division  
Department of Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Mr David J Chetwyn, MA, MA, MRTPI, IHBC  
Consultations Secretary  
Institute of Historic Building Conservation  
142 Richmond Street,  
Penkhull,  
Stoke-on-Trent,  
Staffordshire,  
ST4 7DU

Tel: 01782 413896  
Mob: 07974 099635  
E-mail: consultations@ihbc.org.uk

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Dear Sir

### **The Future of Ecclesiastical Exemption**

I refer to the above consultation document.

The Institute of Historic Building Conservation is the professional body representing conservation specialists and practitioners in the public and private sectors in the United Kingdom and the Republic of Ireland. It has around fourteen hundred members divided between fourteen branches. The Institute exists to establish the highest standards of conservation practice, to support the effective protection and enhancement of the historic environment, and to promote heritage-led regeneration and access to the historic environment for all.

The IHBC would make the following responses to the consultation questions:

***Q1. Do you agree that high-level management agreements, entered into separately by each denomination, would be an appropriate vehicle for continuing the operation of the exemption in England? Do you agree that such a step-change would enable denominations to deal more holistically with their own assets where there is a multiplicity of designations on one site and a complexity of various sets of procedures?***

There are differing views on the effectiveness of the Ecclesiastical Exemption procedure between the various IHBC regions, and this appears to be indicative of considerable inconsistencies in its operation in different areas and for different denominations. The North West Region in particular felt that the Ecclesiastical Exemption should be retained and made to work. However, in some regions proper procedures for consulting local authorities have not been established.

For example, a number of local authorities in Staffordshire, Cambridgeshire and other areas have experienced a largely ad hoc approach to consultation by the Church of England. In some instances, local authorities are approached by the architect directly, in some by the client, and in many cases there is no formal consultation. Thus, local authorities and local amenity groups are effectively

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excluded from the decision making process. It should be noted that circulating the agendas of meetings of Diocesan Advisory Committees does not compensate for proper consultation. It is necessary for local authorities to be provided with full plans and details of proposed works, and for the 28 day period for response to be allowed.

Some members have highlighted the benefits arising from the more detailed level of control over interiors imposed by the Ecclesiastical Exemption, especially in the case of unlisted buildings. The high level of skills of some advisory committees is also recognised. Of course, the advisory committees and internal controls could continue even if statutory decision making was transferred to local authorities.

Before introducing any new provisions, the DCMS should investigate why the system has failed in some areas and with some denominations. There is clearly a question over whether the exemption should continue, given such failures.

The case for continuing with the Ecclesiastical Exemption should also be weighed against considerations of democratic accountability, consistency, openness, fairness, and involvement of local communities. The Government's commitment to wider community involvement is stated in both 'Power of Place' and 'A Force for Our Future'. The consultation document does not adequately address the issue of community participation, including local civic or heritage groups. This issue needs to be robustly addressed. It should be noted that there is a requirement for all listed building consent applications to be publicised under normal planning controls.

Problems can arise where there are serious disputes about proposals. The Church of England's system for dealing with these instances, through the consistory court procedure, is unwieldy and often seen as biased towards the church's own interests. The normal planning appeal/inquiry system is, in comparison, more transparent and independent.

The standard of decision making and availability of specialist conservation advice to decision making bodies is clearly important. There is also the problem of balancing the pastoral and conservation needs of the buildings. Whilst DACs can have architect members, they are not always conservation specialists. It is essential that each level of church administration be advised by conservation specialists. The IHBC would be pleased to assist in formulating appropriate job descriptions for these roles. Most exempt groups have failed to appoint conservation officers, in spite of the finding of the DCMS Newman report (1997) that they should do so.

However, the IHBC does recognise that some denominations have developed their systems of control since 1994 when the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order came into force. Progress has been made and there is undoubtedly a greater level of awareness and understanding of conservation issues in some denominations than existed ten years ago, and this can only enhance their general level of stewardship. It is desirable to build upon the goodwill and endeavour of knowledgeable volunteers. The IHBC recognises the benefits of a stewardship approach, in addition to proper controls.

Concern has been expressed over the available expertise in local authorities to deal with ecclesiastical buildings, especially where conservation specialists are not employed. Clearly, skills are required to deal with all specialist building types, including Ecclesiastical ones. The IHBC would stress that ALL local authorities should be expected to employ conservation specialists and that this should be the subject of a performance indicator.

The IHBC would support the case for management agreements, only if the case for continuing with Ecclesiastical Exemption is made. However, the current failings of the system and issues of democratic accountability must be addressed before the survival of Ecclesiastical Exemption is assumed.

***Q2. Do you agree that English Heritage should be the body appointed by the Government both to validate and monitor the operation of the exemption under management agreements entered into with each denomination in England? How should English Heritage fulfil its monitoring role? Should this be by a combination of selected inspection of works carried out and the requesting of stewardship reports on the operation of the exemption throughout each denomination's estate?***

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The IHBC agrees that English Heritage should have a central role in *negotiating* management agreements, providing additional resources are provided to fund this activity, and the above failings are addressed. There is also a need for local authorities to be closely involved.

However, the IHBC is concerned that a conflict of interests may occur if English Heritage is involved in *monitoring* Management Agreements. A number of English Heritage officers sit on the advisory committees.

Before developing new management agreements, there should be an audit of how the Ecclesiastical Exemption has worked in the past. Where proper consultation procedures have not been established, the Exemption should lapse immediately, and normal secular controls should apply.

Different denominations should be legally precluded from making decisions unless the proper consultation procedures have been followed.

It is necessary to consider problems of enforcement and ensuring work is done to standard. Although there is an existing system of enforcement, the experience of some members is that it is rarely used and is self policing in nature. The IHBC would recommend that procedures be introduced to require checks to be carried out on completion of works, examining their quality and compliance with approved plans.

***Q3. Do you agree that all management agreements should include a separate strand on the best practice which should apply to considering the impact of proposed works on the archaeology of the site, not only in relation to the building used primarily as a place of worship, but also in relation to its curtilage?***

The IHBC supports the proposal to deal explicitly with archaeology, relating to both the building and land within its curtilage.

***Q4. Do you agree that it would be sensible to treat Anglican cathedrals as a special group within the framework of the management agreement entered into with the Church of England?***

Cathedrals are clearly buildings of particular importance and it may be appropriate to deal with them as a special group. However, it is important to appreciate that all listed buildings are important. There should not be any suggestion of grade II buildings being of low priority.

***Q5. Do you agree that it would be an appropriate step to have a mechanism by which denominations whose listed places of worship persistently breach the management agreements would default, through agreed stages, to the secular system of controls? How best could such a process be made fair and reasonable, including having a structured appeal process?***

The first stage of any new system should be to undertake an audit of past practice. Any denomination which has consistently failed to follow proper consultation procedures should revert to full secular controls. It may be appropriate in such circumstances to suspend the exemption at the regional rather than national level. Of course, some allowance needs to be made for minor transgressions, providing steps are taken to address the problem.

It should be unlawful for any denomination to make a decision under Ecclesiastical Exemption provisions unless proper consultation procedures have been followed.

***Q6. Do you agree that it would be appropriate to allow those denominations and faith groups which lost the right to exemption following the 1994 Order to become entitled again to operate the exemption under management agreements entered into with the designated body?***

If management agreements are introduced, they should be available to any denomination that can demonstrate that it has the proper mechanisms in place. It should not be assumed that those denominations that have enjoyed the Ecclesiastical Exemption since 1994 should continue to do so. As mentioned above, the failings of the current system need to be addressed.

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***Q7. Do you agree that 'peculiars' and other special cases could continue to be subject to the exemption in England by means of a management agreement with the appropriate denomination? Do you agree that, in the case of the Church of England, such an agreement should be made centrally with the Council for the Care of Churches, which presently has responsibility for compiling and maintaining the list of 'peculiars' and special cases which have opted to come under the Church of England's Faculty Jurisdiction system? Do you think it would be appropriate for relevant secular umbrella bodies, e.g. the Prison Service, the National Health Service and the Independent Schools Council, to have any input into such management agreements where they effect, for example, chapel buildings in prisons, hospitals and schools which are used as places of worship according to the rites and ceremonies of the relevant denomination?***

Peculiars may be dealt with by generic management agreements, if the case for retaining Ecclesiastical Exemption is made. It would be necessary for secular bodies to be involved in the formulation of management agreements where they had an interest in the building in question.

### **Regulatory Impact**

The new provisions will have significant resource implications. There will be considerable costs to English Heritage and Local Authorities in negotiating and monitoring management agreements. There will also be costs involved in introducing effective measures for community participation in decision making (this issue is not addressed in the document, but is of key importance). Proper monitoring will also have significant cost implications, but is essential if the Ecclesiastical Exemption is to survive.

### **Conclusion**

Before proceeding with reform, there is a need for the DCMS to thoroughly investigate the current operation of ecclesiastical exemption, to assess the reasons for its failure in some areas, and to consider whether it should continue.

The proposed reforms may improve the system, but only if they address past problems such as failure to undertake proper consultation with local authorities.

The DCMS also needs to consider whether the retention of the ecclesiastical exemption is appropriate in principle, given the need for democratic accountability, consistency and the Government's stated commitment to wider community involvement.

I trust that the above comments are helpful.

Yours faithfully

Dave Chetwyn  
Consultations Secretary