

THE FACULTY APPLICATION CONSULTATION PROCESS

A GUIDANCE NOTE FOR DIOCESES

The purpose of this document is to provide dioceses with information on the full faculty application consultation process. It discusses the circumstances under which consultation is required, who should be consulted, how long they have to respond and the documentation required to support an application.

1. Introduction

There are approximately 2,000 listed places of worship in Wales, of which the Representative Body of the Church in Wales, owns half. The maintenance, repair and day-to-day management of all churches and churchyards is carried out at a diocesan level. Any changes to these churches and churchyards requires permission in the form of a *faculty*. The procedure by which permission is obtained is regulated by the *Rules of the Diocesan Courts* in the *Constitution of the Church in Wales*, and is known as the *Faculty Procedure*¹ (Appendix I). Each diocese operates the faculty procedure in its own area.

The Church in Wales is exempt from the requirement to apply for listed building consent to the Local Planning Authority (LPA), when carrying out works to its listed churches, and other structures and buildings within their curtilage, because of the operation of the faculty procedure. This “ecclesiastical exemption” is part of national legislation as described in the *Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018*².

Guidance on the operation of the Order is provided in Cadw’s *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption*³, which outlines the matters to consider when planning changes to listed places of worship and other buildings within their curtilage. It sets out a code of practice for the operation of the “internal systems of control” of all exempt denominations over works to their listed places of worship. This means that the faculty procedure must comply with the standards set out in the code to ensure that it is equivalent to the secular system, and thus maintain an appropriate level of protection for Church in Wales’ churches.

Cadw, the Welsh Government’s historic environment service, monitors the effectiveness of the faculty procedure on behalf of the Welsh Ministers.

¹ Volume II: Section 4: Part XI & XII – The Diocesan Courts (Faculties General Provisions & Faculty Procedure)

² Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (Wales) Order 2018

<http://www.legislation.gov.uk/wsi/2018/1087/made>

³ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption*

https://cadw.gov.wales/sites/default/files/2019-05/20181120Managing_Change_Listed_Places_of_Worship-ENG.pdf

2. Ecclesiastical Exemption and the Faculty Rules

According to the faculty procedure (also known as the *Faculty Rules*) as defined in the Constitution (Appendix I), all applications for listed churches or those in a conservation area, require consultation with Cadw and the LPA. If the proposed work will change or affect the character of the church or its archaeological importance or any archaeological remains within its curtilage, then the appropriate National Amenity Society should also be consulted. If the work involves demolition, then the Royal Commission on the Ancient and Historic Monuments of Wales (RCAHMW) must also be consulted. In addition, the Rules also state that certain types of faculty application must be referred to the Representative Body (RB) and the Cathedral and Churches Commission for consultation.

The introduction of the Order and its accompanying guidance **will require some changes to the Faculty Rules** to make them compliant with these documents. This process is currently ongoing. Dioceses are therefore advised to ensure that DAC members, Registrars and Chancellors are fully up-to-date with the Order guidance and to follow it when assessing full faculty applications. Most importantly, there is now a presumption that any proposed works must:

“... take into account (along with other relevant factors) the desirability of preserving the listed ecclesiastical building or its setting, or any features of special architectural or historic interest which it possesses. This includes the interior and any fixtures and fittings which often make an important contribution to the special interest of historic places of worship. The list description may not detail all the special features of a building which means that it is important to make sure that its significance is fully understood before decisions about change are taken⁴.”

Note: a separate guidance document⁵ is available to help parishes understand significance and how to use it to assess the impact of any proposed works on their church buildings. Its aim is to assist applicants completing the statement of significance form on the Online Faculty System (OFS).

Ecclesiastical exemption applies to all types of works to listed churches. It also applies to “any object or structure fixed to that building, or within its curtilage, which although not fixed to it, forms part of the land, whether or not that object or structure is listed in its own right⁶.”

This means that some unlisted structures (eg. lychgates, boundary walls, memorials, vestries, school rooms and church halls) now come within the scope of ecclesiastical exemption, if they are within the curtilage of the listed place of worship. If this is the case, they will now require a faculty for any proposed works. The important thing to consider here is whether the proposed changes to the unlisted structures would affect the character and setting of the listed church. If yes, then a faculty will be needed (see Appendix II for further information on ecclesiastical exemption and curtilage structures).

⁴ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption. Section 5.5 Considering Proposals for Change p12*

⁵ *Statements of Significance for the Online Faculty System: A Guidance Note for Parishes*

https://churchinwales.contentfiles.net/media/documents/Property_Dept_-_Writing_OFS_Statements_of_Significance.pdf

⁶ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption. Section 3 What does the Ecclesiastical Exemption Cover? p5*

Likewise, curtilage structures previously listed in their own right, now no longer require listed building consent from the LPA, as they come under the ecclesiastical exemption. They will however require a faculty.

A residential building (such as a clergy house) attached to a listed place of worship, will still need listed building consent from the LPA for any works done to it. Also, any works to a listed church carried out by a third party eg. a service provider applying to erect a telecommunications mast on a church tower, will require listed building consent, in addition to a faculty. Unlisted churches will only require a faculty.

If an exempt denomination fails to provide an appropriate level of protection for its listed places of worship, these buildings could be brought within secular listed building control. Alternately, ecclesiastical exemption could be withdrawn from an individual building if potentially damaging works could be, or have been, carried out without appropriate consideration.

Ecclesiastical exemption does not extend to the following:

Planning permission

Any works affecting the exterior of a listed place of worship or an unlisted place of worship in a conservation area, could need planning permission and building regulations approval from the LPA, in addition to a faculty. In situations where this may apply, contact the LPA for confirmation.

Scheduled monument consent

Churches cannot be scheduled as monuments, but some curtilage features such as churchyard crosses and inscribed stones may be. Where scheduled monuments are likely to be affected by any proposed works, an application for scheduled monument consent must be made to Cadw. Applicants are encouraged to request a pre-application meeting on site to discuss their proposals.

Total demolition

Where total demolition of a listed church is proposed, it is no longer covered by ecclesiastical exemption and listed building consent must be obtained from the LPA.

Conservation area consent

Conservation area consent from the LPA is needed for any proposals to demolish an unlisted church in a conservation area, where demolition amounts to pulling down a building so that it is nearly or completely destroyed.

Closed or closing churches

Ecclesiastical exemption ceases as soon as a church is made redundant. If the church is listed, then listed building consent will be needed from the LPA for any future works. Conservation area consent will also be needed for substantial partial or full demolition.

The removal or disturbance of human remains

A Ministry of Justice exhumation license is required to remove or disturb a body or cremated remains, regardless of whether a church is unlisted or listed, or within or out of ecclesiastical exemption.

3. External Consultations

The need to consult Cadw, LPAs, National Amenity Societies and the RCAHMW (known as external consultees) has not changed with the introduction of the OFS, although this is now only mandatory for full faculty applications.

External consultees can be invited to view an application and its accompanying documentation through the OFS via an email link (providing they are registered with the system). They can then comment on the application if they wish. At present, comments are directed to the DAC Secretary and/or Registrar, who should upload them to the OFS as supporting documentation for that application. In the future, it is hoped that consultees will be able to upload responses directly to the system themselves.

It is therefore extremely important that an application contains enough information (eg. plans, photographs, schedules of works, etc) for consultees to be able to review it. This means that **all** relevant supporting documentation **must** be uploaded to the OFS **prior** to the consultation request being sent out.

This is emphasised in *Managing Change to Historic Places of Worship in Wales: Ecclesiastical Exemption, Section 5.6: Consultation*, which states:

“As soon as a complete application has been submitted with all the appropriate supporting information, denominations should formally consult Cadw, the local planning authority and the national amenity societies, allowing them (except in cases of emergency) 28 days to comment on the proposed works. ... It is also good practice to consult the community council, the Royal Commission on the Ancient and Historical Monuments of Wales and the Welsh archaeological trusts⁷.”

Appendix III details a list of supporting documents that are required for frequently proposed works (eg. new heating and lighting systems, wall and roof repairs, etc). OFS applicants can view and download this list on the Petition/Application screen when completing their full faculty application. It is therefore recommended that DAC Secretaries and Registrars check that these supporting documents are in place before any external consultations are requested.

3.1 When is Consultation Required?

At present, Faculty Rule 63 states that consultation is required with Cadw and the Local Planning Authority (LPA) for works to a listed church or one in a conservation area. Faculty Rule 64.1 states that consultation is required with the National Amenity Societies (ie. those organisations designated under Rule 64.2) if the proposed work would change or affect the character of a church or its archaeological importance, or any archaeological remains within it or its curtilage. If the work involves demolition, then the application must be referred to the RCAHMW. In both cases, the DAC Secretary should refer the application to the external consultees within 14 days of receiving it.

However, it is important to note that the above Faculty Rules no longer reflect the Order guidance which states that “All proposals for internal and external works to a listed place of worship or curtilage structure that would affect its character as a building of special

⁷ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption. Section 5.6 Consultation* p13

architectural or historic interest should be submitted for approval⁸ ...” This means that any faculty applications that meet this criteria must **always** be referred for external consultation to Cadw, LPAs and the Amenity Societies.

In addition, it is good practice to consult with the local community council, the RCAHMW and the Welsh Archaeological Trusts (WATs) as per the Order guidance. A good rule of thumb is to consider if the character, significance, archaeology or setting of the listed church or curtilage structure will be affected by the works. If so, then these bodies should also be consulted. WATs in particular need to be consulted on any applications involving archaeology, as the Historic Environment Record (HER) which they maintain, may need to be updated.

Consultees have 28 days to respond. If responses are received after the deadline, it is still good practice to include them in the faculty application supporting documentation, especially if the application itself has been returned to the applicant for further information, or it will be discussed again at a DAC meeting.

Conservation area consent has now been removed for exempt denominations. This means that it is no longer covered by the Faculty Rules (which will be amended). Consent will therefore be needed from the LPA for the following works in a conservation area:

- Demolishing an unlisted church with a volume of more than 115 cubic metres
- Demolishing an unlisted gate, fence, wall or railing over 1 metre high next to a highway (including a public footpath or bridleway) or public open space; or over 2 metres high elsewhere

If in doubt about the above, always check with the LPA whether an application for conservation area consent will be required.

4. RB & Cathedrals and Churches Commission Consultations

In addition to consulting external statutory consultees, the Faculty Rules also require “internal consultation” to take place for certain types of full faculty applications. These are set out principally in Rules 65, 66, 67 & 68 (Appendix 1).

4.1 RB Consultations

Rule 66.2 lists the circumstances under which the RB should be consulted, and these have been reproduced below, along with a commentary on a range of issues that may concern the RB.

I. The demolition of, material alterations or additions to, the fabric of a building

- Proposals which might significantly reduce the value of the property asset
- Additions which might block access to the remainder of the site or adjacent land
- Proposals which involve installations by third parties as separate legal arrangements may need to be put in place

⁸ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption. Section 5.3 Independent Scrutiny and Professional Advice p11*

- Proposals which create a long-term obligation which might restrict options for the property in the future
- Many of these proposals may also require Planning Permission or other consents and the RB may be in a position to advise

2. The construction of new buildings

- The RB would seek to ensure proposals are of a good design with proper regard to issues such as accessibility, future maintenance and sustainability
- New buildings are an opportunity to look at the overall site and proposals should not miss opportunities for further development

3. The setting aside of areas for the interment of cremated remains

- RB policy in this area is to “discourage parishes from assuming more burial ground responsibilities (which should lie with the local burial authority) unless adequate financial support is provided for the acquisition and maintenance of the proposed burial grounds or extensions’ and to ‘oppose the use of churchyards where no burials currently exist for the burial of human or cremated remains.”⁹
- This policy is based on a concern not to burden parishes, now or in the future, with liabilities they may not be able to sustain. Any such proposals, should be undertaken with clear support (especially financial) from the wider community in which the parish is located given the public nature of the service provided.

4. A proposal within the Regulations Relating to the Removal of Monuments and Gravestones¹⁰

- Such proposals must be carefully considered and will also require planning consent.
- A detailed procedure is outlined within the Regulations and the RB will need to be involved with its implementation
- Such proposals are likely to need careful handling in terms of public relations

5. The disposal of any part of the fabric or contents of a building

- The RB is owner of both fabric and contents and must consent to the principle and method of disposal (including sale, gift or scrapping)
- There are provisions for sale proceeds to be made available for parish use
- The same principles of best value apply to the sale of contents as for buildings and appropriate expert advice will need to be taken
- The RB has a *Code of Practice for Contents* which should be complied with

⁹ *Management of Churchyards: Policy and Guidance*

https://churchinwales.contentfiles.net/media/documents/Property_Dept_-_Churchyards_Guidance_and_Policy.pdf

¹⁰ *Volume II: Section 2: Rules and Regulations - Regulations Relating to the Removal of Monuments and Gravestones*

6. Works which would affect significantly the insurance of a building

- Churches are insured under a group scheme in which the RB is joint insured
- The RB can assist with negotiations over insurances implications
- Insurance implications need to be considered at an early stage in any proposal to avoid later problems

7. Works which would require the grant of an easement or wayleave

- Such grants, as well as leases or licences, should be granted by the RB as owner. PCCs are not a legal body capable of granting such rights

8. Any change in use of a building or land

- Changes of use will require planning permission
- Changes of use may have insurance implications
- Changes of use may affect the Ecclesiastical Exemption for certain buildings

It should be noted that although Rule 66.1 specifies that the Registrar should send the faculty application and its supporting documentation to the RB for consultation, this can also be done by the DAC Secretary. It is therefore important for each diocese to decide which person sends the consultation request to the RB. Adequate supporting information **must** be included with the application in order for it be reviewed by the RB (see Appendix III).

The RB have 28 days to respond to a consultation request (Rule 67). However, if they feel further information is required before they can respond, they can ask for this from the Registrar, DAC, Cathedral and Churches Commission and the Archdeacon (or other persons appointed by the Bishop), who have 28 days to supply it (Rule 68).

4.2 Cathedrals and Churches Commission Consultations

The Cathedrals and Churches Commission need to be consulted on certain types of proposed works to cathedrals (see below and Appendix IV). They have 28 days to comment.

- any work or works to preserve, alter or add to the building or its contents which would materially affect the architectural, archaeological, artistic or historic character of the Cathedral
- the sale, loan or other disposal of any object for the time being designated under paragraph (d) or rule 21(b) hereof as being of outstanding architectural, archaeological, artistic or historic interest

In addition, the Commission can also be asked to comment on works to churches by the Diocesan Chancellor, Registrar or DAC Secretary.

Summary

The current Faculty Rules have been in place for many years and are now in the process of being updated to take account of the Ecclesiastical Exemption Order 2018 and its

accompanying guidance. Anyone therefore requesting a consultation from external consultees, should follow the Order guidance, as the Faculty Rules will ultimately adopt these principles.

This guidance document will be revised in the future once the changes to the Faculty Rules have been implemented.

APPENDIX 1: Faculty Rules

The Constitution: Volume II: Section 4

PART XII – The Diocesan Courts:

Faculty Procedure

58. An application for a faculty shall be made by any person, persons or body having an interest to promote. An applicant may consult with the DAC about any aspects of the proposed application, see Form 1 Part 1. This process is optional and an applicant may submit a formal application at any time.
59. An application for a faculty shall be made in Form 1 in Part 2 Schedule 3 in the following manner:
- (i) The applicant shall complete Form 1 Part 2 Schedule 3 and shall lodge it with the Registrar, together with a copy certified by the Chapter Clerk or the Secretary of the Parochial Church Council, of the resolution that the Chapter or the Parochial Church Council, as the case may be, has adopted after the consideration of the objects of the application.
 - (ii) If the applicant is not the Chapter or the Incumbent and Churchwardens of a parish, a written statement signed by the Chapter Clerk in the name of the Chapter, or by the Incumbent or the Cleric-in-Charge or Area Dean and the Churchwardens, as the case may be, indicating whether or not they are opposed to the objects of the application.
60. The applicant shall be responsible for ensuring that a Notice of the lodging of an application giving reasonable details of the works envisaged shall be on prominent public display at the same time as the application is made;
- (i) in the case of a Cathedral, including the Cathedral Church of St Woolos, in the Cathedral concerned and in the vicinity thereof;
 - (ii) otherwise in the parish church and all other churches in the Parish and in the vicinity of each and every such church or churches;
- for a period of at least twenty-eight days from the date of the lodging of the application with the Registrar and on or before the date of display, a copy of the Notice shall be sent to the Registrar. Such Notice shall follow Form 2 in Schedule 3.
61. Where the work envisaged would change or affect the character of a building in a Conservation Area or listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 or any statutory amendment or re-enactment thereof as being of special architectural or historic interest, a copy of the Notice, certified by the Chapter Clerk or by the Secretary of the Parochial Church Council, shall also forthwith be published by the Applicant in a local newspaper.
62. Within seven days of the receipt by the Registrar of the items mentioned in Rule 59 and of any relevant representations made by that time in response to the Notice the

Registrar shall send copies thereof to the Diocesan Advisory Committee and to the Commission in any case falling within Rule 14(a) of the Commission's Rules.

63. In the case of a building in a Conservation Area or listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 or any statutory amendment or re-enactment thereof as being of special architectural or historic interest, within 14 days the Secretary of the Diocesan Advisory Committee shall send to CADW and to the local planning authority notification accompanied by copies of the Notice referred to in Rule 60 of the Application and of any other documents lodged by the Applicant with the Registrar.
- 64.1 Where the work envisaged would change or affect the character of a building or would affect the archaeological importance of such a building or archaeological remains within it or its curtilage, within 14 days the Secretary of the Diocesan Advisory Committee shall send to the national amenity societies (as defined in part 2 of this Rule) notification accompanied by a copy of the Notice referred to in Rule 60. If the work involves demolition the notification and a copy of the Notice shall also be sent to the Royal Commission for Ancient and Historic Monuments Wales.
- 64.2 For the purposes of these Rules "national amenity societies" means any of the following, namely: The Ancient Monuments Society, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society, the Council for British Archaeology, the 20th Century Society and any such other body as may from time to time be designated by the Standing Committee of the Governing Body.
65. In the case of a Cathedral, including the Cathedral Church of St Woolos, the copies referred to in Rule 63 shall also be sent by the Secretary of the Diocesan Advisory Committee to the Commission.
- 66.1 In the case of any of the matters specified in this Rule, the Registrar, within seven days of his/her receipt of the application, shall send copies of the Application, the documents accompanying the Application and any subsequent advices to the Representative Body. These matters are:
- 66.2 (i) the demolition of, material alterations or additions to, the fabric of a building;
- (ii) the construction of new buildings;
- (iii) the setting aside of areas for the interment of cremated remains;
- (iv) a proposal within the Regulations Relating to the Removal of Monuments and gravestones;
- (v) the disposal of any part of the fabric or contents of a building;
- (vi) works which would affect significantly the insurance of a building;
- (vii) works the execution of which would require the grant of an easement or wayleave; or
- (viii) any change in use of a building or land.

Representations or Objections

67. Subject to Rule 68 the Representative Body, within twenty-eight days of its receipt of the copies referred to in Rule 66 shall return the papers to the Registrar, accompanied either by any written observations, representations or objections it wishes to raise thereon, or by a written statement that it has none such to offer.
68. The Representative Body, by notice addressed to the Registrar, may require the Diocesan Advisory Committee, the Commission, the Archdeacon or other person appointed under Rule 69 by the Bishop, to provide a further report on any matter it wishes to raise on the Application. Within twenty-eight days of the date of such notice, the Diocesan Advisory Committee, the Commission, the Archdeacon or the other person appointed under Rule 69 by the Bishop, as the case may be, shall submit the further report in writing to the Registrar under Form 7 Schedule 3, who thereupon shall send a copy thereof to the Representative Body. The provisions of Rule 67 shall apply as regards the report referred to in this Rule.
69. The Diocesan Advisory Committee or the Commission, as the case may be, within fifty-six days of the receipt of the copies referred to in Rule 62, shall submit to the Registrar, in written form, signed by its Chairman, its advice, addressed to the Chancellor, as to the artistic, aesthetic or architectural merits of the works described in the Application together with any representations from any bodies referred to in Rule 64 or to whom the Notice referred to in Rule 60 has been sent. The Archdeacon in whose archdeaconry the subject of the Application lies shall, if he/she sees fit or if requested by the Chancellor, add his or her separate written advice to the Chancellor as to the theological merits of the works. If the archdeaconry be vacant, or if the Archdeacon be unavailable or incapacitated, and in the case of all Applications relating to any Cathedral, including the Cathedral Church of St Woolos, the Diocesan Bishop shall appoint a suitable person to act in the place of the Archdeacon under Form 8 in Schedule 3.
70. Within seven days of the receipt of applications, observations, representations, objections or statements from the Representative Body under Rule 67, the Diocesan Advisory Committee and the Commission, the Registrar shall refer such papers to the Chancellor.

Citation

71. The Chancellor, within twenty-eight days of his receipt of the Application, documents and papers, shall either grant the faculty and Rules 84, 85 and 86 shall apply, or issue a Citation addressed to the Applicant and the Representative Body and all other interested persons, including the Archdeacon or other person appointed under Rule 69 by the Bishop, which Citation shall follow Form 14 in Schedule 3.
72. In the case of an application for a Faculty relating to a church other than a Cathedral or the Cathedral Church of St Woolos, at any time prior to the grant of the Faculty, or the issue of the Citation, the Chancellor, the Registrar, or the Diocesan Advisory Committee, may seek the advice of the Commission on such application, whereupon the proceedings under Rule 71 shall be stayed for a period not exceeding twenty-eight days, during which time the advice of the Commission shall be furnished and, if sought

- by the Registrar, or the Diocesan Advisory Committee, be made available, by them, to the Chancellor.
73. The Citation shall be displayed by the Chapter Clerk, or the Churchwardens, as the case may be, in the location or locations mentioned in Rule 60, for a period of fourteen days commencing within three days of the receipt of the Citation. The Citation, endorsed with a certificate of due display under this rule, shall be returned to the Registrar within three days after the expiry of the period of display.
 74. The Registrar, within fourteen days of the issuing of the Citation, shall send a copy thereof to any person, body or society who, or which, has made representations.
 75. The Chancellor, at any stage in the proceedings, may order the issue of a further Citation or Citations following the procedure of Rules 71 and 73.
 - 76.1 Any person wishing to oppose the Application (whether all of it or only part of it) shall do so by lodging with the Registrar a Notice of Opposition to the Faculty within twenty-one days of the date when the Citation (or the latest Citation, as the case may be) was first displayed under Rule 73.
 - 76.2 A Notice of Opposition shall follow Form 11 in Schedule 3 and shall set out in paragraphs, numbered consecutively, the grounds of opposition.
 77. When a Citation has been issued, no Faculty shall be granted or refused until after the period for lodging Notices of Opposition has expired.
 78. If, by the relevant date, no Notice of Opposition to the Faculty has been lodged, the Chancellor may grant or refuse the Faculty without a hearing, in which case he shall do so within seven days after the date for lodging Notices of Opposition has expired. Otherwise, subject to the provisions of Rule 79, the Chancellor shall fix a date for a hearing, which shall not be less than twenty-one nor more than forty-two days after the date of such expiry. The Registrar shall give notice of the date of the hearing to the Applicant, those who have given Notice of Opposition and all other interested parties.
 - 79.1 The Chancellor, before fixing a date for a hearing and should he/she deem such a course appropriate, may invite the parties to accept judgment on the basis of written representations, rather than by way of hearing. If all the parties so agree in writing, the Registrar shall require them to submit their respective representations to him/her within twenty-one days after the expiry of the period for lodging Notices of Opposition.
 - 79.2 After receipt of such representations, the Registrar shall furnish all parties with a copy of each other party's representations and shall allow them twenty-one days in which to reply thereto in writing.
 80. Within fourteen days after receiving notification of the date for a hearing, or after submitting written representations under Rule 79, as the case may be, any person, body or society who or which had given Notice of Opposition to the Faculty shall either lodge with the Registrar as security for costs such a sum as the Chancellor may determine, or execute a Bond in the same form set out in Form 12 of Schedule 3 for

the same purpose and in the same sum, with any sureties required and approved by the Chancellor. Failing such lodgement or Bond, the Chancellor may grant the Faculty, disregarding such Notice or Notices of Opposition.

81. Neither the Archdeacon nor other person appointed under Rule 69 by the Bishop, the Diocesan Bishop nor the Representative Body shall be liable for costs.
82. At the hearing of an Application the Chancellor may, on such terms as he or she considers just, give permission to be heard to any person, body or society who or which had not previously been a party to the proceedings.

Grant or refusal of Faculty

- 83.1 The Chancellor, within twenty-eight days after the hearing, or of the last day allowed by the Registrar for the filing of replies to any written representations, as the case may be, shall either grant or refuse the Faculty and in either case give reasons for his/her decision.
- 83.2 If the Chancellor does not state his/her decision and the reasons for it orally at the conclusion of the hearing, the Registrar shall inform the parties and persons or bodies referred to in Rule 68 of the Judgment as soon as may be thereafter and shall send a copy of such Judgment to the parties no more than three days after the receipt by the Registrar of such Judgment.
84. The Faculty may be granted with or without conditions.
- 85.1 The grant or refusal of the Faculty shall be evidenced in writing, in either case signed by the Chancellor. Such grant or refusal shall follow Form 10a or Form 10b in Schedule 3 as the case may be.
- 85.2 The Faculty shall be implemented within a period of five years from the date of the grant thereof or other such shorter period as the Chancellor directs or shall otherwise lapse.
86. Upon the grant or refusal of the Faculty, the Registrar shall send the grant or refusal, as the case may be, to the Applicant, with copies to the Representative Body, the Secretaries of the Diocesan Advisory Committee and (if it be involved) the Commission, the Chapter Clerk or the Secretary of the Parochial Church Council (as the case may be), the Archdeacon or other person appointed under Rule 69 by the Bishop, and all others who may have made material representations in the course of any proceedings under these Rules.
87. Upon completion of the works authorised by the Faculty, or of such part of the works as, for the time being, has been carried out, the Applicant shall send to the Registrar a Certificate (countersigned by the architect, chartered building surveyor or other professional adviser, if one has been engaged) to the effect that the works have been executed in accordance with the terms of the Faculty and, at the same time, shall send a copy of such Certificate to the Representative Body and to the Secretaries of the Committee and (if it be involved) of the Commission. Such Certificate shall follow Form 13 in Schedule 3.

88. In any case to which this Part applies, the Deputy Chancellor shall have all the powers and may perform all the duties of the Chancellor for whom he/she is appointed to act pursuant to section 24 (3) of Chapter IX.

APPENDIX II: Ecclesiastical Exemption and Curtilage Structures

To be eligible for ecclesiastical exemption the principal listed building should be used for ecclesiastical purposes both before and after the works, though in some cases the listed building may also accommodate other uses alongside its primary role as a place of worship.

Ecclesiastical exemption also applies to any object or structure fixed to that building, or within its curtilage, which although not fixed to it, forms part of the land, whether or not that object or structure is listed in its own right.

The curtilage is an area of land around the listed building, and any buildings and structures within this area that are subordinate or ancillary to the main building and that predate July 1948 are considered by law to be part of the listed building (see later for definition and examples)

Unlisted churches and structures within their curtilage

1. A faculty is required for any work to an unlisted church. For routine maintenance and minor works this will be a List A application. For straightforward works that will have little or no impact on the historic fabric of the church, this will be a List B application. For any other works (eg. substantial or complex works) this will be a Full application. Always consult your DAC Secretary if in doubt prior to making your faculty application.
2. Planning permission from the Local Planning Authority (LPA) will be required for any substantial exterior works eg. a new extension. This is in addition to a faculty. Always consult your DAC Secretary prior to submitting the faculty application and applying for planning permission.
3. Listed Building Consent (LBC) will be required from the LPA if you are proposing works to a listed structure within the curtilage of the church eg. lychgate, churchyard cross, etc. This will be in addition to a faculty. Always consult your DAC Secretary prior to submitting the faculty application and applying for LBC.
4. If your proposed works will affect the setting or character of a listed structure within the curtilage of the church, you should seek advice from the LPA and your DAC Secretary as LBC may be required. This will be in addition to a faculty.
5. If your church is in a conservation area, then you will need Conservation Area Consent for the following:
 - Demolish a building with a volume of more than 115 cubic metres. There are a few exceptions - you can get further information from the relevant council
 - To demolish a gate, fence, wall or railing more than one metre high next to a highway (including a public footpath or bridleway) or public open space; or more than two metres high elsewhere
 - There are certain exemptions from the general requirement to seek conservation area consent for the demolition of buildings in conservation areas (see Appendix II).

This will be in addition to a faculty.

Listed Churches and structures within their curtilage

1. A faculty is required for any work to a listed church. For routine maintenance and minor works this will be a List A application. For straightforward works that will have little or no impact on the historic fabric of the church, this will be a List B application. For any other works (eg. substantial or complex works) this will be a Full application. Always consult your DAC Secretary if in doubt prior to making your faculty application.
2. Planning permission from the Local Planning Authority (LPA) will be required for any substantial exterior works eg. a new extension. This is in addition to a faculty. Always consult your DAC Secretary prior to submitting the faculty application and applying for planning permission.
3. A faculty will be required for any works to a listed structure within the curtilage of the church eg. lychgate, churchyard cross, etc.
4. A faculty will NOT be required for works to an unlisted structure within the curtilage of the church UNLESS the setting or character of the church itself is affected.
5. If your church is in a conservation area then you will need Conservation Area Consent for the following:
 - Demolish a building with a volume of more than 115 cubic metres. There are a few exceptions - you can get further information from the relevant council
 - To demolish a gate, fence, wall or railing more than one metre high next to a highway (including a public footpath or bridleway) or public open space; or more than two metres high elsewhere
 - There are certain exemptions from the general requirement to seek conservation area consent for the demolition of buildings in conservation areas (see Appendix II).

This will be in addition to a faculty.

Definition of curtilage structures

Curtilage structures are ancillary or subordinate to the listed building. They form part of the attached land and have done so since before 1 July 1948. By law, such curtilage structures are considered to be part of the listed building.

Changes in ownership, occupation or use after listing will not affect this listed status. Examples of curtilage structures include boundary walls and outbuildings. Your local planning authority will be able to advise whether structures fall within the curtilage of a listed building, but, ultimately, it may be a matter for the courts to decide. Each case needs to be treated on the basis of its own facts, but the main factors to consider are:

- the physical layout of the listed building and the other structures
- whether the structures were built before 1948

- the ownership of the listed building and the other structures now and at the time of listing
- the use and function of the structures; specifically whether they served the purposes of the listed building at the time of listing
- whether the structures form part of the land

The significance and value of curtilage structures will vary according to the nature of their relationship to the listed building, their integrity and intrinsic merit. Works to a curtilage structure will not always affect the character of the listed building, either because the works themselves will have minimal impact, or because the curtilage structure does not make a significant contribution to the special interest of the listed building. Your local planning authority will determine whether or not listed building consent is required based on:

- whether a structure does fall within the curtilage of a listed building
- the significance of the structure in its relationship to the listed building
- the impact that changes to the curtilage structure may have on the listed building

Examples

1. An unlisted church hall (or other unlisted structure) within the curtilage of a listed church

Before the introduction of the Ecclesiastical Exemption Order 2018, any works to a church hall (unless attached to a church) would not require a faculty. Now, if the proposed works will change the external appearance of the hall, then a faculty **will** be required. This is because “some structures that are not listed in their own right come within the scope of the ecclesiastical exemption provided that they are within the curtilage of the principal listed ecclesiastical building, and that the exempt denomination is responsible for the proposed work. Unlisted curtilage structures could include lychgates, boundary walls, memorials, vestries, school rooms and church halls.”¹¹

2. A listed building within the curtilage of a listed cathedral or church

All cathedrals in Wales and some churches are part of a complex of other buildings. Sometimes these buildings are listed in their own right and are contained within the curtilage of the cathedral or church. Whether listed building consent is required for works to these buildings depends on their use and relationship with the principle listed cathedral or church, which must be used for ecclesiastical (worship) purposes.

Buildings that are wholly or mainly residential, such as a deanery, rectory, parsonage, etc, and either detached or attached to the principle listed cathedral or church, will need LBC. Likewise, buildings that are solely used for other purposes such as diocesan offices, shops, cafes, visitor centres, etc.

An example of such as complex of buildings would be at Brecon Cathedral Close. The Deanery, Almonry, Chapter House and Diocesan Offices, Tithe Barn (café and visitor centre), lychgate, some boundary (priory) walls and postern gateways, are listed and fall within the curtilage of the Cathedral.

¹¹ *Managing Change to Listed Places of Worship in Wales: Ecclesiastical Exemption*, p4.

Only the Tithe Barn, lychgate, boundary walls and postern gateways would NOT require LBC, as they are ancillary or subordinate to the principle listed cathedral. The other buildings are either residential or serve the Cathedral and WILL require LBC.

Please note: consult the RB and the LPA if you are unsure of whether separately listed buildings or structures within the curtilage of a listed cathedral or church require LBC.

Click [here](#) for more information from the Planning Portal Wales on demolition (part or whole) in a Conservation Area.

APPENDIX III: Supporting Documentation

Heating, Lighting & Sound Systems

- An annotated plan of the church showing the location of the new equipment (eg. radiators, light fittings, boiler, speakers, etc.) and ancillary fittings such as electrical cabling, sockets, switches and controllers
- Photographs of the areas of the church where the new equipment will be installed. These should be annotated to show the position of the new items
- A specification and/or quotation detailing the proposed work from a suitably qualified professional
- Details of the new equipment eg. a manufactures catalogue/specification (to include dimensions, colour, weight, etc)
- Details of how the equipment will be fixed to the church and any measures taken to reduce the damage to its historic fabric and its visual impact eg. reusing existing fittings.
- Statements of Significance and Needs and a Heritage Impact Assessment

Applicants should also read the Church in Wales' guidance notes on [Heating in Churches](#) and [Lighting in Churches](#).

Furniture, Furnishings & Carpets

- A plan and photographs of the church showing where the new item/s will be located
- Photographs/catalogue illustrations of the items, including details of materials and dimensions
- Details of how the items will be fixed (if at all) and any measures taken to reduce any damage to the existing historic fabric
- If a new carpet is to be fitted, provide information on existing floor finishes (eg. tiles, flagstones, ledger stones, etc) and the type of underlay to be used
- Statements of Significance and Needs and a Heritage Impact Assessment

Works in Churchyards including walls, lychgates, tombs, monuments, headstones, new paths or alterations to existing, new benches (with plinths), new toilet/drainage systems and water supply.

- An annotated plan and photographs of the churchyard showing the area/s affected
- A specification, quotation or conservator's report detailing the proposed works
- An archaeological assessment (if any below-ground work is proposed)
- Confirmation that the local planning authority has been consulted if the proposed works will affect the character or setting of the church and/or churchyard and details of their response (planning permission may be required)
- Statements of Significance and Needs and a Heritage Impact Assessment

New Stained Glass Window

Informal advice should be sought from the DAC before submitting an application.

- A plan of the church showing the location of the new window
- Clear photographs showing the area where the new window will be installed

- Detailed design drawings to include the dimensions, colours and materials to be used
- A design statement explaining the philosophy of the design
- A specification/schedule of works for the removal of the existing window and the installation of the new
- Statements of Significance and Needs and a Heritage Impact Assessment

Applicants should also read the Church in Wales' guidance note on [New Stained Glass in Churches](#).

Wall and Roof Repairs

- Photographs and an annotated plan showing the location of the area/s affected
- A specification or schedule of works
- Statements of Significance and Needs and a Heritage Impact Assessment

Conservation and Repair of Artwork (and other objects)

- Clear photographs of the items showing details of the areas to be conserved or repaired
- A report (to include a schedule of works or specification) from a suitably qualified specialist or conservator
- Statements of Significance and Needs and a Heritage Impact Assessment

Bells and Organs

- A bellhanger's or bellfounder's report which should include a specification or schedule of works. If structural work is required, an architect's or structural engineer's specification or report should be included for this element of the works.
- An Organ builder's report. If a new organ is to be installed, full details of this and any organ to be replaced should be provided, including an annotated plan of the church showing the location of the old and new organs.
- In both instances, recent photographs of the bells, organs and any supporting structures, should be provided.
- Statements of Significance and Needs and a Heritage Impact Assessment

Reordering, Extensions and New Facilities (kitchen, toilet, etc)

Informal advice should be sought from the DAC before submitting an application.

- External and internal photographs of the church, including the areas where the proposed works will be located
- Architect's drawings to include plans and elevations (existing and proposed)
- A specification and schedule of works
- A design statement explaining the philosophy behind the scheme
- An archaeological assessment (if any alterations to the fabric of the church or churchyard are proposed)
- Statements of Significance and Needs (the latter to include an options appraisal) and a Heritage Impact Assessment

The Sale, Removal or Disposal of Items

- Photographs of the items
- A statement justifying their sale, removal or disposal (this can be included in the Statements of Significance and Needs or the Petition form)
- A valuation of the items

Applicants should also read the Church in Wales' guidance and policy note on [Church Contents](#).

PV and Solar Panels

Informal advice should be sought from the DAC before submitting an application.

- An annotated plan of the church showing the location of the new equipment (eg. panels and control equipment, cabling, etc)
- Photographs of the areas of the church where the new equipment will be installed. These should be annotated to show the position of the new items
- A specification and schedule of works, plus confirmation from a suitably qualified professional that the roof structure can carry the additional weight of the equipment
- Details of the new equipment eg. a manufactures catalogue/specification (to include dimensions, colour, weight, etc)
- Details of how the equipment will be fixed to the church and any measures taken to reduce the damage to its historic fabric and its visual impact.
- Confirmation that the local planning authority has been consulted as planning permission may be required
- Statements of Significance and Needs and a Heritage Impact Assessment

APPENDIX III: The Cathedrals and Churches Commission

The Constitution: Volume II: Section 2

PART II – Cathedrals and Churches Commission Rules

Duties of the Commission

14.

The Commission shall:

- (a) advise a diocesan chancellor on any petition for a faculty relating to a Cathedral where the proposal involves:
 - (i) any work or works to preserve, alter or add to the building or its contents which would materially affect the architectural, archaeological, artistic or historic character of the Cathedral; or,
 - (ii) the sale, loan or other disposal of any object for the time being designated under paragraph (d) or rule 21(b) hereof as being of outstanding architectural, archaeological, artistic or historic interest;
- (b) when required by a diocesan chancellor, registrar or diocesan advisory committee, advise on a petition for a faculty relating to a church other than a Cathedral;
- (c) if requested, and if the Commission thinks fit, advise any member or body of members within the Church in Wales on the care, conservation, maintenance, repair and development of a Cathedral or other church;
- (d) in the absence of a Cathedral Fabric Advisory Committee, designate as such those objects included in the inventory compiled and maintained for the Cathedral under paragraph (c) of rule 32 hereof which it considers to be of outstanding architectural, archaeological, artistic or historic interest;
- (e) monitor the operation of the faculty system including the operation of Diocesan Advisory Committees, faculty procedures and the Ecclesiastical Exemption process;
- (f) advise the Representative Body on its built heritage.

15.

The Commission may:

- (a) promote co-operation between itself and organisations concerned with the care and study of buildings of architectural, archaeological, artistic or historic interest in Wales;
- (b) assist the Representative Body, the Chapter of a Cathedral and any other member or body of members within the Church in Wales by participating in educational and research projects which in its view will promote the care, conservation, maintenance, repair and development of ecclesiastical buildings;

- (c) maintain a library of books, plans, drawings, photographs and other material relating to churches and their contents;
- (d) advise on the appointment of architects, archaeologists, surveyors and other experts;
- (e) advise on the acquisition and use of grants for Cathedrals and other churches;
- (f) promote best practice through conferences or otherwise for those concerned with the care, conservation, maintenance, repair and development of Cathedrals and other churches.

Tina Andrew
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The Church in Wales
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