

HE 30

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

Communities, Equality and Local Government Committee

Bil yr Amgylchedd Hanesyddol (Cymru)/Historic Environment (Wales) Bill

Ymateb gan: Yr Eglwys yng Nghymru

Response from: The Church in Wales

1. The Church in Wales operates 1346 churches and chapels across Wales of which 945 are listed buildings (of which 138 are Grade I). In addition, the Church in Wales owns around 150 listed church halls, parsonages and other houses. We have over 170 Scheduled Ancient Monuments within our care. As such the Church in Wales is a key partner in caring for a substantial proportion of Wales' built heritage. A key fact, however, is that virtually all this nationally important heritage, whilst owned centrally, is managed and maintained by local volunteer congregations through their Parochial Church Council.
2. The draft Bill contains little that directly relates to ecclesiastical buildings although clearly the proposals relating to arrangements for listing and for the protection of Scheduled Ancient Monuments is all relevant. The apparent exclusion of ecclesiastical property can, to an extent, be explained by the fact that much of it is covered by The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994. This Order exempts certain denominations from certain sections of the Planning (Listed Buildings and Conservation Areas) Act 1990 (sections 3, 4,7-9,47,54 and 59). The effect of this is that the Church in Wales, along with a number of other denominations, is exempt from the need to seek Listed Building Consent and Conservation Area Consent (and related enforcement processes) in respect of its places of worship because it has adequate consent procedures in place (called the Faculty System). A summary of the key aspects of the Faculty System of the Church in Wales is attached at Appendix I for information.
3. The only mention of Ecclesiastical property within the Bill, and its related documentation, is within the draft TAN 24. Whilst this reference is useful, we do believe it should be replicated within, and linked to, the other guidance alongside the Bill. This is for two reasons; firstly, local volunteers caring for churches are quite likely to refer to WG/Cadw guidance and unless the information clearly flags the different procedures for certain denominations, there is likely to be confusion. Secondly, much of the thinking behind the guidance, in particular Conservation Principles and philosophy, are useful to all those caring for heritage property and, thus, should not be ignored simply because there are differing consent procedures.
4. At the footnote 64 to Paragraph 5.17 of TAN 24, there is mention of guidance on Ecclesiastical Exemption being 'under review to put it in line with that published in England in 2010'. We do believe it would have been helpful to have received this guidance alongside the Bill in order that the operation of the Exemption could be considered alongside the provisions of the Bill.

The English guidance followed changes to the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 that applied only to England. The response to the initial Heritage Bill Consultation (Proposal 33) indicated that Welsh Government would 'implement the proposed changes to secondary legislation' to set out works that are

subject to the Exemption. It was assumed this would bring Wales into line with the English provisions. It is not clear from the draft Bill or TAN 24 how this will be enacted but we fully support the original proposal and hope that the footnote referred to indicates that this remains Welsh Government's intention.

Alongside this, we would like to discuss with Welsh Government adjustments to our system to more easily deal with minor 'like for like' works whilst protecting the Exemption.

5. Paragraph 5.6 of TAN 24 refers to Heritage Impact Assessments. It is assumed that the Statements of Significance and Justification within our faculty system would be considered equivalent to Heritage Impact Assessments and hope that the forthcoming guidance will clarify.
6. Heritage Partnership Agreements (TAN 24:5.13 and Bill Sections 11 and 28) appear to be a useful initiative though we suspect only relevant to a few of our sites (possibly Cathedral Closes). We believe our own faculty system rules would need to be amended to allow for such agreements to be enacted especially where sites contain different types of heritage assets in different ownerships. The Bill should not preclude exempt denominations from entering these agreements by virtue of the Exemption provisions.
7. Historic Environment Records (Bill Sections 33-36): We welcome the statutory footing for these important records. As we understand it, these are currently outsourced to the four Welsh Archaeological Trusts. We are unclear as to the way in which information gathered from work involving places of worship subject to ecclesiastical exemption links into HERs. We are concerned that HERs are rather lacking in information relating to ecclesiastical buildings probably as a consequence of Ecclesiastical Exemption. We would welcome an exploration of how information can be better shared especially in the light of our plans to create an on line Church Heritage Record.
8. Historic Environment Advisory Panel (Bill Sections 37-38): The establishment of this independent panel would be welcomed. It is important that it can give professional and expert guidance to the strategy of Cadw, free of political bias. We have been concerned that the priorities of Cadw may sometimes be based on the political priorities of the day rather than the key priorities for the historic environment. Wales' heritage transcends political cycles and priorities and we hope this panel could help to redress that imbalance.

We are unclear as to the role the panel would play in reviewing or assessing the working of Ecclesiastical Exemption but we would welcome any input from the panel in future to making sure the exemption is exercised appropriately.

9. Historic Assets of Special Local Interest: We note the draft guidance and whilst appreciating the need to identify assets of local importance, we are concerned that without very strict criteria and a robust decision making process, these assets may be subject to a rather ad hoc consent regime subject to local political pressure. Unlisted churches are highly likely to feature in such lists. Fundamentally, without very clear regulation, the process of managing change in these buildings could be very challenging and opaque. It is also important that this proposal dovetails with merging policy thinking around Protecting Community Assets.

10. Historic Parks and Gardens: We support the proposal to create a statutory register. We are conscious of the connections between the church and such areas especially relating to former bishop's palaces and their grounds. In most cases we have some continuing area of land associated with such areas.
11. Appeals Procedure (Bill Section 24): We support the amendments to notification and consultation of proposed changes to listed building status. We are less clear about the process and provisions for an owner to request a review of a listing perhaps some years after the original listing. This may be more one of clarity of process (noting the useful arrangements in England) but it must be possible for an owner to seek a review of a listing (de-listing) at any time and not simply object at the time of a proposed listing.
12. Recovery of Costs (Bill Section 30): The making of a local land charge against the property owner does seem an appropriate mechanism to recover costs incurred in putting right unauthorized damage. The difficulty is that damage may be caused by a tenant or occupier not under the direct control of the owner. Whilst tenancy agreements may allow for recovery of such costs, it may not be as easy for a landowner to pursue such costs as it is for the Local Authority to impose the Land Charge. We assume that these provisions remain, though, within the Exemption provisions (s.60 of the 1990 Act).

### **Appendix I: Key aspects of the Church in Wales Faculty System**

- The faculty system is organized within each of the six Welsh Dioceses
- Faculties are granted by the Diocesan Chancellor after receipt of advice and consultation on proposed works to church buildings
- The principal source of advice is the Diocesan Advisory Committee which consists of professionals and heritage specialists (some nominated by umbrella bodies) including a Local Authority nominated representative plus key clergy
- All works to churches require a faculty to be granted (not limited to works that affect the character) although some minor matters are excluded (relating mainly to moveable contents)
- All churches (listed and unlisted) are subject to the same faculty procedure
- Applications in respect of listed buildings are sent for consultation to Cadw, Local Authorities and specified amenity societies for comment
- All applications are publicly advertised with a site notice
- Applications for changes to Listed Buildings are publicly advertised
- Significant proposals are required to be supported by a Statement of Significance and Justification
- Applications subject to significant comment or concern are subject to a consistory court hearing process
- Enforcement procedures are in place through the Church in Wales Court system
- A faculty permission lasts for five years and may be subject to conditions

- Faculty covers work within the curtilage of the building except for separately listed structures and trees. Dual control exists in respect of these between the denomination and the Local Authority.