

A CONSULTATION on ECCLESIASTICAL EXEMPTION

March 2016

Historic Environment Division

Consultation Paper



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MINISTER'S FOREWORD



Churches and other places of worship are among our most prominent and important listed buildings. In every village and town, and across the rural area, they stand as a witness to our religious heritage and, in most cases, to a continuing tradition of faith. They are also among our most beautiful places with huge effort often put into their location, design and decoration. This may include buildings of great simplicity and presence.

Such buildings reflect the different approaches to worship followed by our various denominations but also the differences between the practices of past generations and those of the current. Though associated with particular groups, they represent a legacy that we can all be proud of. Together, they make a major contribution to the character of where we live and, as a place where much past community effort was lavished, they form an important repository of the best work of our forefathers.

Since the early 1970s, the Department of the Environment has worked to identify and record this legacy. The best parts, it has formally designated since 1973 as listed buildings. However, the normal controls associated with such a designation do not apply to places of worship in active use. This 'Ecclesiastical Exemption' is common across the UK, but the parallel systems of control used elsewhere were never introduced here.

For the last forty years or so we have therefore relied upon the custodians of these buildings do the right thing and protect this important resource. They have largely done this very well, but there have been cases where important parts of our heritage have been lost or more unfortunately degraded by ill informed changes.

The view of the Department is that it is now time for a change. With safeguards to ensure that the particular liturgical requirements of users are taken into account, it is proposed that such places are brought within the standard consent regime for listed buildings. The alternative, of creating a formal parallel consent regime for defined

denominations, as in England, is considered costly and bureaucratic with little added benefit to those involved.

This, however, is an important change and I would value your consideration of this proposal before any final decision is made.

Mark H Durkan

Minister of the Environment

1 March 2016

1 BACKGROUND TO CONSULTATION

Introduction

Under Section 85(8) of the Planning (NI) Act 2011 (see Appendix 1), listed ecclesiastical buildings are exempted from the need to apply for listed building consent for changes that may affect their architectural or historic interest. Such buildings are among the most important and iconic listed buildings in Northern Ireland, yet in common with other parts of the UK, they are exempt from the need to apply for such changes. While in other regions there is a parallel system of consents operated by defined church bodies, in Northern Ireland there is no equivalent system. There is therefore no body formally required to consider the impact of proposed changes on the architectural or historic interest of ecclesiastical buildings.

In 2014, the Historic Buildings Council of Northern Ireland wrote to the Minister on this issue. They were concerned by the unnecessary loss of detail on some churches which had led to their delisting and of proposals for significant change to others which would remove much of their architectural and historic interest.

The Minister asked for a subcommittee of DOE officers and HBC members to be set up to review the current situation. Their recommendation that the exemption be removed and replaced with clear guidance forms the body of this consultation.

2 REGULATORY CONSIDERATIONS

Nature of the Consultation In this consultation document the Department of the Environment (“the Department”) sets out proposals for the removal of the exemption from listed building consent for ‘*an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works.*’¹The consultation also proposes that detailed guidance on works to churches, which take into account liturgical needs should be published in parallel to any proposed removal of exemption.

The purpose of this consultation is to seek the views of all interested parties on the Department’s proposals. The consultation will run for 12 weeks. The Department will give due consideration to all responses and a synopsis of responses will be published as soon as practicable following the consultation period.

Additional copies of this consultation document may be made without seeking permission. This document is also available in alternative formats; please contact us to discuss your requirements

The document is published on the Department’s website.

If you have any queries regarding this consultation please contact the Heritage Advice and Regulation team by email at heritageadvice@doeni.gov.uk or by post to the address below or by telephone our enquiries line on 02890 823126/ 02890 823177.

How to Respond

Early responses are encouraged but all responses should arrive no later than 5pm on Monday 13 June 2016. Responses may be sent by email to ecclesiasticalexemption@doeni.gov.uk or by post to:

Historic Environment Division

6th Floor

Causeway Exchange

1-7 Bedford Street

Town Parks,

Belfast, BT2 7EG

¹ Section 85(8) of the Planning Act (Northern Ireland) 2011

When you are responding please state whether you are responding as an individual or representing the views of an organisation. Before you submit your responses please read the “Freedom of Information Act 2000 - Confidentiality of Consultation Responses” section below, which gives guidance on the legal position.

Equality Screening

Section 75 of the Northern Ireland Act 1998 requires that public authorities have due regard to equality issues in carrying out functions relating to Northern Ireland. We have completed an equality screening of the policy proposals being consulted upon and have concluded that they do not impact on equality of opportunity for any of the 9 categories specified in section 75 (religious belief; political opinion; race; age; marital status; sexual orientation; men and women generally; disability; and dependants).

The Equality Commission will receive copies of this consultation document as part of this consultation exercise. We will take into account any comments that the Commission might have.

Human Rights Act 1998

The Human Rights Act 1998 implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the proposals within this consultation are compatible with the Human Rights Act, but would welcome any views that you may have.

The Human Rights Commission will receive copies of this document as part of this consultation. We will take into account any comments that the Commission might have.

Rural-Proofing

Rural Proofing is a process to ensure that all relevant Government policies are examined carefully and objectively to determine whether or not they have a different impact in rural areas from that elsewhere, because of the particular characteristics of rural areas. Where necessary the process should also examine what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community.

The Department has considered these policy proposals in relation to the rural community and has found no potential differential impacts.

Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can refuse to disclose information only in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority (the Department in this case). This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances.

The Lord Chancellor's Code of Practice on the Freedom of information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature;
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses, please contact the Information Commissioner's Office:

Tel: (028) 9051 1270

Email: ni@ico.gsi.gov.uk

Website: www.informationcommissioner.gov.uk

3 PROPOSALS

DOE POSITION PAPER ON ECCLESIASTICAL EXEMPTION

Listed Places of Worship and the Ecclesiastical Exemption: A position paper



Introduction

In 2014, at the Minister's request, the Department of the Environment: Historic Environment Division (HED) and the Historic Buildings Council for Northern Ireland undertook a review of the way in which the Ecclesiastical Exemption is currently working in Northern Ireland. This review concluded that the exemption is not protecting our ecclesiastical heritage and recommended that it be removed.

The consequence of removing the exemption is that Listed Building Consent would be required for any works involving the complete or partial demolition of a listed place of worship, or for its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest - as is currently the case for all other types of listed building. HED would then participate in the process of assessing applications for Listed Building Consent as a statutory consultee to the new council planning authorities. It will also be able to offer pre-application advice to congregations to help them develop proposals, based on its experience and expertise in working with historic buildings.



Armagh's cathedrals at the heart of the community

The review recognised that it is important that Northern Ireland's historic places of worship retain their role as living buildings at the heart of their communities and that the efforts of congregations to keep their places of worship in use are supported. This may require changes to align with modern worship and liturgical practice. Proposals for additional uses and new facilities such as meeting spaces, kitchens and toilets which will help to sustain and grow these important parts of our heritage may also be necessary.

However, there is also a need to manage these changes, ensuring that the special values of listed places of worship are sustained and enhanced for this and future generations. The review has concluded that, for listed places of worship, control and advice through the Listed Building Consent process, as required for all other listed buildings, is the most appropriate way to do this.



Places of worship are much more than just their architecture

What is the Ecclesiastical Exemption?

Section 85(8) of the Planning Act (Northern Ireland) 2011 states that all listed places of worship are exempt from the requirement to obtain Listed Building Consent for ‘the demolition, alteration or extension of an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works’.

What does this mean in practice?

The exemption means that Listed Building Consent is not required for:

- Works to a listed building whose primary use is as a place of worship and which is currently being used as a place of worship;
- Works to an object or structure within such a building; and
- Works to an object or structure fixed to the outside of such a building or within its curtilage, except where such an object or structure is itself listed.



This listed chapel, built in 1818, was originally a building of significant local interest. Substantially rebuilt in 1982, it now has uPVC windows, fibre cement slates, pebble dash render and an entirely modern interior. The building no longer meets the test, and was delisted in 2010.



A listed Gothic Revival church and adjoining church hall. Under the Ecclesiastical Exemption, Listed Building Consent was not required for the demolition of the hall.

Total demolition is not exempt, as the building could not be considered to be in use for ecclesiastical purposes.

Listed places of worship are not exempt from planning permission, building regulations or health and safety legislation.

Why are listed places of worship treated differently from all other listed buildings?

The Ecclesiastical Exemption has been in place in Northern Ireland since the introduction of listing in 1972, and parallels legislation elsewhere in the UK. In GB, the exemption is premised on individual denominations having their own system of controlling and managing change which is as rigorous as secular control. This could be described as an ecclesiastical version of Listed Building Consent, and gives listed places of worship in GB what is called 'parity of protection'. These parallel systems for authorising works are monitored by government and where they are shown to be ineffective, the exemption can be removed.

Key principles of the parallel systems of control are:

- assessment of works is undertaken by a body that is independent of the congregation, and that has expert advice available to it;
- the decision-making body should take into account the architectural and historic interest of the building, along with other factors;
- proposals should be publicised, and notified to the appropriate regulatory body (for example, Historic England) and the local council;
- procedures are transparent; and
- there is an effective mechanism to prevent breaches of control, and to effect reinstatement where appropriate.

Is this the situation in Northern Ireland?

Some ecclesiastical bodies have their own internal systems of control. In the Department's experience, none of these consistently embody all the key principles set out above. Other denominations operate in isolation with all decisions being taken by the congregation. In some circumstances, the Ecclesiastical Exemption is regarded as a legislative 'loophole' which allows consideration of the special architectural and historic interest of the building to be set aside when planning a project. This can have disastrous consequences.

What is the position in the Republic of Ireland?

There is no Ecclesiastical Exemption in the Republic of Ireland. Bodies responsible for a place of worship included on the list of protected structures are required to gain agreement from the local authority for any works of alteration – both inside and out. The principal denominations in Northern Ireland are organised on an all Ireland basis – indeed some dioceses straddle the border – and are familiar with the consent regime.



Most of Northern Ireland's places of worship are maintained and repaired to a high standard

Why is the Department proposing to remove the Ecclesiastical Exemption at this time?

The review highlighted four issues, which when considered together indicate that the current situation is unsustainable and that it is timely to make the change now.

- During the Department's systematic Second Survey of Northern Ireland's listed buildings (which has covered 60% of the region), 45 places of worship (out of a total of 913) have been delisted due to inappropriate alterations. Many more were found to have lost significant amounts of architectural or historic interest. It is likely that the majority of these alterations would not have happened if Listed Building Consent had been required.



Listed in 1977, this early nineteenth century church was delisted in 2013. Although the church retains its original simplicity of proportion and style, recent refurbishments – including replacing all the windows – have stripped it of most of its historic character and interest.



- Faith communities throughout Northern Ireland are changing. The last five years have seen some congregations experiencing unprecedented growth. With that growth commonly come proposals for substantial meeting/greeting spaces, extensions and internal reorganisation. Some of these schemes involve such radical alteration, very little of special interest would survive if they were to go ahead. First Antrim Presbyterian Church is one such example, where planning permission was granted in 2014 for the demolition of all historic fabric except the front façade. It was argued on behalf of the congregation that the works were exempt because worship would continue in a room behind the front wall - until the replacement church was built to the rear. Should the scheme proceed, the majority of this grade B+ listed building will be irreplaceably lost.



First Antrim Presbyterian Church – should the works go ahead as proposed, this magnificent interior will be lost

- Other places of worship are struggling to survive and need to find new uses. New uses often bring public benefit, but may result in a wish for major internal alterations and/or re-ordering. New work in historic places of worship should always be based on an understanding of the cultural and heritage significance of the building; consider the long-term (alterations considered acceptable now may be regretted in the future); and achieve high standards of design, craftsmanship and materials. In these situations, it is particularly important that proposals are discussed and agreed within the framework of the Listed Building Consent process, as would be the case for all other listed buildings.
- The transfer of planning powers to councils in April 2015 and the transfer of responsibilities currently held by the Department of the Environment to the Department for Communities in 2016 provide an opportunity to revise the existing system.



Re-ordering need not entail loss of special character

What would be the impact of removing the exemption?

DOE would work with ecclesiastical bodies and individual congregations, as it does now on an informal basis when invited, to develop schemes that deliver the needs of the users, being mindful of particular worship or liturgical requirements, whilst ensuring that the special interest of the building is retained and, where possible, enhanced.

Would removing the exemption require a change in legislation?

Section 85(9) of the Planning Act (Northern Ireland) 2011 states that the exemption 'shall cease to have effect on such date as the Department may by order appoint'.

Why does the DOE use the term 'listed place of worship' and not simply 'church'?

A wide range of denominations and faiths use listed buildings. Most are Christian churches or chapels, but there are also meeting houses and a synagogue plus an increasing number of originally secular buildings now being used by faith groups. If they are open for public worship six times a year then they are considered as places of worship. The Ecclesiastical Exemption as it currently stands applies to all listed places of worship.



Working with congregations from the start of a project can result in high quality schemes which preserve the integrity of the building and allow new uses to flourish



Listed Places of Worship and Planning Permission

Planning permission must be obtained for any alteration or extension that materially affects the external appearance of an existing place of worship. When considering whether to grant planning permission, the planning authority must have special regard to the desirability of preserving the building or any features of special interest which it possesses.

It has not been the Department's custom and practice to require listed places of worship to obtain planning permission for what may be regarded as minor works – for example, replacing windows or doors, removing render or changing the eaves detail. The cumulative impact of a series of minor changes can result in the loss of a listed building's special character, as seen in the places of worship delisted following the Second Survey. The Department will be issuing revised guidance to local council planning authorities advising that planning permission should be sought for all such works – which materially affect the external appearance of the building (Section 23(3)(a) Planning Act (NI) 2011).



DOE is already consulted on some external alterations requiring planning permission, for example ramps



Interior features, such as these, are particularly vulnerable

The proposed way forward

Following consideration of a range of available options, it is the view of the Department of the Environment and the Historic Buildings Council for Northern Ireland that the most effective way to ensure the appropriate management of Northern Ireland's rich listed ecclesiastical heritage is to:

- Develop best practice guidance on the alteration and adaption of Northern Ireland's listed places of worship;
- Clarify within this guidance that listed places of worship do not enjoy permitted development rights and that external changes, such as removing and replacing windows and doors, taking off render or changing roof details are 'development' and require planning permission;
- Issue an order that the Ecclesiastical Exemption is removed in Northern Ireland; and
- Advise councils that styles of worship or liturgical requirements should also be considered when assessing Listed Building Consent applications for places of worship.



Well designed extensions can enhance a building's special character



4 QUESTIONS

DOE welcomes comments on any aspect of this paper. However, we are particularly interested in comments in regard to the following questions:

Q1	Do you agree with the Department that the Ecclesiastical Exemption should be removed?
Q2	The Department could have proposed a parallel system of consents based upon the English model. It rejected this because this was likely to require a complex system of control which would be costly to administer without clear benefits to owners/ custodians or to the protection of ecclesiastical heritage assets. Do you agree with this approach?
Q3	The Department is proposing that the liturgical requirements of places of worship become a material concern in determining relevant applications for listed building consent for such buildings. Do you agree?
Q4	Do you agree that best practice guidance on the alteration and adaption of Northern Ireland's listed places of worship should be developed in parallel to the process of removal of the exemption?
Q5	Do you agree that the guidance should clarify that listed places of worship do not enjoy permitted development rights and that external changes such as removing windows, doors, taking off render, or changing roof details are 'development' and require planning permission?
Q6	Do you agree that what is understood by 'liturgical requirements' should be clearly defined in the guidance?

If you think the Department might have better achieved its aim of improving the management of change to our listed ecclesiastical heritage please feel free to say so. In responding to this consultation, please highlight any possible unintended consequences of the proposals and any practical difficulties you foresee in implementing them.

5 SUBMISSION OF RESPONSES

The consultation process and how to respond

Topic of this consultation	Ecclesiastical Exemption
Scope of the consultation	The consultation will help to inform the development of proposals to remove Ecclesiastical Exemption
To	Anyone with an interest in this area is welcome to respond.. Comments would be welcomed in particular from those directly affected i.e. the owners and guardians of places of worship and from District Councils,
Body Responsible for the consultation	The Historic Environment Division of DoE
Duration	The consultation will run for twelve weeks. It will begin on Monday 21 March 2016 and will end on Monday 13 June 2016
Enquiries	E-Mail ecclesiasticalexemption@doeni.gov.uk Telephone enquiries at 02890 823126/ 02890 823177
How to respond	You can respond via email to ecclesiasticalexemption@doeni.gov.uk Postal responses can be sent to ECCLESIASTICAL EXEMPTION Historic Environment Division Department of the Environment 6 th Floor Causeway Exchange 1-7 Bedford Street Town Parks Belfast BT2 7EG.
After the consultation	The views and advice expressed in responses to this consultation may be placed in the public domain. Each response will inform DOE in its planning of the management of change at listed places of worship.

APPENDIX LEGISLATION

SECTION 85 OF THE PLANNING [NI] ACT 2011

Control of works for demolition, alteration or extension of listed buildings

85—(1) Subject to this Part, if a person executes or causes to be executed 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, and the works are not authorised under subsection (2), that person shall be guilty of an offence.

(2) Works for the demolition, alteration or extension of a listed building are authorised under this Part if—

(a) written consent for the execution of the works has been granted by a council or the Department and the works are carried out in accordance with the terms of the consent and any conditions which may be attached to the consent; and

(b) in the case of demolition—

(i) a person duly authorised in writing by the Department has been afforded reasonable access to the building for a period of at least one month following the grant of listed building consent and before the commencement of the works, for the purpose of recording it; or

(ii) the Department has stated in writing that it has completed its recording of the building or that it does not wish to record it.

(3) If written consent is granted by a council or the Department for the retention of works for the demolition of a listed building, or for its alteration or extension, which have been executed without consent under subsection (2), the works are authorised under this Part from the grant of the consent under this subsection.

(4) Consent under subsection (2) or (3) is referred to in this Act as “listed building consent”.

(5) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent that person shall be guilty of an offence.

(6) A person guilty of an offence under subsection (1) or (5) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding £100,000, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both,

and in determining the amount of any fine imposed on a person convicted of an offence under subsection (1) or (5) the court shall have particular regard to any financial benefit which has accrued or is likely to accrue to that person in consequence of the offence.

(7) In proceedings for an offence under this section it shall be a defence to prove the following matters—

(a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;

(b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;

(c) that the works carried out were limited to the minimum measures immediately necessary; and

(d) that notice in writing justifying in detail the carrying out of works was given to the council as soon as reasonably practicable.

(8) This section shall not apply to works for the demolition, alteration or extension of—

(a) an ecclesiastical building which is for the time being used for ecclesiastical purposes or would be so used but for the works; or

(b) a building for the time being included in the schedule of monuments compiled and maintained under Article 3 of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 (NI 9);

and for the purposes of this subsection, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of that office shall be treated as not being an ecclesiastical building.

(9) Subsection (8) shall cease to have effect on such date as the Department may by order appoint.

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