

EXPLANATORY MEMORANDUM TO
THE ECCLESIASTICAL EXEMPTION (LISTED BUILDINGS AND CONSERVATION
AREAS) (ENGLAND) ORDER 2010

2010 No. 1176

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This Order replaces the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (SI 1771/1994), in respect of England. The 1994 Order excluded the ecclesiastical exemption contained in section 60(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of all ecclesiastical buildings other than those listed in the Order. The purpose of this Order is to provide further exemptions for certain ecclesiastical buildings and to impose restrictions in respect of other ecclesiastical buildings.

3. **Matters of special interest to the Select Committee on Statutory Instruments.**

3.1 None

4. **Legislative Context**

4.1 The Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Act”) provides the legal basis for the way in which buildings considered to be of historic or architectural interest are identified and protected in England and Wales. The Act requires the Secretary of State to compile a list of buildings which merit special architectural or historic interest, or to approve such a list compiled by the Historic Buildings and Monuments Commission for England (known as English Heritage). These buildings are referred to as “listed buildings” under the Act. In general, works carried out to listed buildings require listed building consent from the local authority for works that affect their special interest.

4.2 Section 60(1) and (2) of the Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to sections 3,4,7 to 9, 47, 54, 59 and 74 of the 1990 Act. These sections relate to listed building control, including building preservation notices, restrictions on works of demolition, alteration or extension, compulsory acquisition of buildings in need of repair, urgent preservation works and offences in relation to international damage. Section 75 of the Act provides that ecclesiastical buildings which are for the time being used for ecclesiastical purposes are not subject to section 74 of the Act which relates to the control of demolition of building in a conservation area. These exemptions are commonly collectively referred to as ecclesiastical exemption. The meaning of “ecclesiastical building” is not defined in the Act and therefore is given its ordinary meaning.

4.3 Section 60(1) and (2) are subject to section 60(3) of the Act which provides that the ecclesiastical exemption does not apply to a building which is used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office.

4.4 Section 60(5) of the Act enables the Secretary of State to make an order restricting or excluding the provisions in section 60(1) to (3) of the Act. The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (“the 1994 Order”) has been the only instrument to be made under section 60(5) of the 1990 Act.

4.5 This Order is being made to reflect a change in policy. In summary, the Order applies the ecclesiastical exemption to objects and structures that were not previously exempt; and restricts the exemption for some of the special cases referred to in the 1994 Order.

4.6 This instrument is being laid with a deferred coming into force date to allow consideration as to whether ecclesiastical buildings will become subject to denominational or secular control in order to retain exemption, and for denominations to make the necessary arrangements to enable them to benefit from the exemption.

5. Territorial Extent and Application

5.1 The Order will only apply in respect of buildings situated in England. Functions of the Secretary of State under the Act (except the Treasury functions under section 83(8)) so far as exercisable by Wales, were transferred to the National Assembly for Wales by virtue of article 2 of the Transfer of Functions Order 1999 (SI 1999/672).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Department's policy is that the Ecclesiastical Exemption from Local Authority controls should only apply to buildings covered by a denominational system of control that provides equivalent protection provided by the Act. It was considered that only religious denominations which had a developed internal system of control to provide equivalent protection for buildings should benefit from the exemption under section 60 of the Act. An Order was made in 1994, which restricted the exemption to buildings of the Church of England, the Church in Wales, the Roman Catholic Church, the United Reformed Church, the Methodist Church, the Baptist Union of England and the Baptist Union of Wales. These denominations were considered to have developed internal systems of control to meet the policy objective.

7.2 The exempt denominations' systems of control follow the requirements of a code of practice issued by the Department which has been revised to reflect the provisions this Order. All denominational approval bodies are required to have representation from English Heritage (EH), local planning authorities (LPAs) and the amenity societies and should either include, or have arrangements for obtaining advice from, persons with professional conservation, archaeological and planning expertise in relation to the protection of ecclesiastical listed buildings and archaeological sites and the working of the secular planning system. In relation to applications for approval of works, systems are further required to include arrangements for consultation with EH, LPAs and the amenity societies.

7.3 Denominational arrangements are as follows:

- In the Church of England, decisions are made by diocesan chancellors, sitting in Consistory Court. Chancellors can seek advice from Diocesan Advisory Committees;
- In the Roman Catholic Church, decisions fall to one of 13 Historic Churches Committees which cover England and Wales;
- In the Methodist Church, decisions fall to a single Listed Buildings Advisory Committee;
- In the United Reformed Church, a Listed Building Advisory Committee to which decisions on works fall, is attached to each of 12 Synods covering England and Wales;
- In the Baptist Unions of England and Wales, a single Listed Buildings Advisory Committee makes decisions.

7.4 The Order will seek to reduce the administrative burdens upon exempt denominations of caring for historic churches and their associated structures. Under the 1994 Order, only a listed church itself is exempt from secular controls. Where there are, in a churchyard, structures that are themselves separately listed buildings, such as lychgates, table tombs, boundary walls or bell towers, these are not covered by the Exemption, but are nonetheless covered by denominational systems of control. This gives rise to ‘dual control’ whereby both Local Authority and denominational consents are needed. The policy imperative is that, if we can accept the stringency of denominational controls as providing equivalent control over works to the church, the largest, most complex and probably the oldest structure on the site, we can accept that the same systems are able to effectively care for other structures. At the same time, the Department sees the benefits of helping the denominations to reduce the burden of caring for the buildings in their management.

7.5 A further policy objective is to remove the ecclesiastical exemption from some of the special cases which benefited from the exemption under the 1994 Order. Under Article 6 of the 1994 Order, exemption from secular controls is also provided for a range of buildings that do not come under denominational controls. These are: Church of England churches outside diocesan control (peculiarities and Royal peculiarities); chapels situated at a range of institutions; churches subject to sharing agreements pursuant to the Sharing of Church Buildings Act 1969; and churches in England of three Scottish denominations.

7.6 The exempting of these buildings from all controls was intended to be temporary pending an election on the part of the managers of affected buildings as to whether to opt the building into denominational controls or revert to secular control. The temporary provision was intended to last 18 months but no timetable was ever set for its resolution. In the case of the Church of England, it was necessary to pass the Care of Places of Worship Measure 1999 in order to allow institutional and other chapels to opt to be covered by the Church’s Faculty Jurisdiction system.

7.7 It is not known how many buildings outside denominational control might be invoking the special cases Exemption under article 6 of the 1994 Order. We know that all listed chapels at schools, colleges, universities, hospitals and prisons are entitled to invoke the Exemption, and that this includes many significant buildings. Other significant buildings such as Temple Church and the Queen’s Chapel of the Savoy are invoking the Exemption. There is no suggestion that any building has undertaken inappropriate works of a major scale, but the Department has been made aware of certain minor works at the chapels of Oxford colleges that would have required consents had an appropriate regime applied. These works involved internal reordering and the installation of security measures.

7.8 The policy objective is to remove ecclesiastical exemption from the following buildings (which were previously exempt under article 6 of the 1994 Order) where no election is made into a denominational system of control:

- the churches in England of two Scottish denominations, who have agreed the changes as they currently have no such buildings;
- churches subject to Sharing Agreements pursuant to the Sharing of Church Buildings Act 1969. Churches Together in England have agreed to the change on behalf of such local partnerships;
- ‘Royal Peculiarities’ (apart from Westminster Abbey and St George’s Chapel, Windsor, which retain the Exemption by virtue of having Fabric Advisory Committees). The Royal Household and Historic Royal Palaces has been consulted and had not been invoking Ecclesiastical Exemption in any case in respect of the chapels in their care legally able to invoke exemption;
- The listed chapels of institutions such as schools, colleges, universities, hospitals and prisons; and
- The places of worship of religious communities

Consolidation

7.9 This instrument represents a consolidated version of the legislation.

8 Consultation outcome

8.1 The Department has consulted on these changes on more than one occasion. The proposals were included in both the White Paper (March 2007) and Draft Bill (April 2008) stages of the Heritage Protection Bill. Individual institutional chapels and umbrella groups of relevant buildings and institutions have also been consulted individually as they will be required to make an election as to whether to become subject to denominational controls in order to retain the Exemption, or default to secular control. The proposal to end the exemption for buildings now covered by denominational control was welcomed by a range of heritage groups and local authorities. There were no negative comments about these proposals, as it has always been expected that the amendments would be made at some stage. While there will be a burden on affected buildings, no-one has cited this as a barrier to compliance with the proposed changes.

8.2 There was no negative comment during consultation at White Paper and Draft Bill stage about the proposals. A further consultation was held with English Heritage, the Amenity Societies, the Institute of Field Archaeologists, the Institute of Historic Building Conservation and the Association of Local Government Archaeological Officers. Responses were received only from English Heritage, which was supportive, and the Victorian Society, which was generally not supportive, as it considers that, in general, the Ecclesiastical Exemption does not provide equivalent protection of buildings to secular controls, that too much weight is given to pastoral need in consideration of changes to buildings, and that the Department should undertake a review of the efficacy of denominational systems in protecting buildings before considering the extension of the Exemption to other structures. The Department responded to the effect that it considers that, in general, the Ecclesiastical Exemption provides an appropriate level of protection for churches, and there was insufficient reason to delay the extension of the Exemption to other structures. The Victorian Society's concerns should be seen in the context of the support or lack of comment from other stakeholders. However, the Church of England, which looks after 85% of the exempt church buildings in England, has promised a review of processes that will encompass some of the concerns of the Victorian Society.

8.3 A further consultation was held for six weeks in February to March 2010. The exercise was shortened because of the previous opportunities to comment on the policy, and sought views on whether the policy intent was achieved by the drafting of the Order. Most comments received concerned the wording of the guidance being produced to accompany the revised Order, but which covers matters beyond the scope of the Order itself. Some respondents agreed that the policy intent of exempting separately listed curtilage structures was achieved by the drafting but others considered this not to be the case as currently drafted. These concerns have now been addressed. Ecclesiastical respondents welcomed the extension of the exemption to separately listed curtilage structures. The Church of Scotland indicated its agreement to the Order insofar as it concerned Church of Scotland church buildings situated in England. Other comments related to the deemed general effectiveness of the Church of England's systems in protecting buildings; the saving to public authorities represented by such systems and the voluntary effort embodied and; the need to ensure local authorities were aware of the changes. One response opposed the extensions to Ecclesiastical Exemption enshrined in the Order, which was on the grounds that they were opposed in principle to the Ecclesiastical Exemption. Some respondents have requested that the Government undertakes a review of the effectiveness of denominational systems of control in protecting listed places of worship. The Department has said that a review will be undertaken at an appropriate stage, and this remains the case.

8.4 The Order confers the Exemption on buildings which are situated within the red line of a Church of England Cathedral. The red lines are inscribed on a plan for each Cathedral authorised for this use in 1994 when the previous Order was passed. The Church of England has requested an

amendment to the Order to provide a mechanism whereby the 1994 plans can be superseded where circumstances at each Cathedral make this desirable. However, we consider that such a provision would represent a sub-delegation of powers. Any amendments to Cathedral plans for the purposes of the Order would need to be enshrined in a further Order.

8.5 The Church of England has also requested that the Order precludes the operation of section 60 (3) of the Act (which provides that ‘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 his office shall be treated as not being an ecclesiastical building’) in relation to chapels at Bishops’ residences. The Order does not contain such a provision. The 1994 Order provided for such chapels to become exempt where an election had been made to subject them to the Church of England’s Faculty Jurisdiction (as its internal heritage consents system is known). No evidence has been supplied to show that this provision was defective, and no details have been supplied regarding the extent to which a specific exemption for Bishop’ chapels would be utilised. The 2010 Order retains the position whereby a Bishops’ chapel will be exempt from secular control where an election is made to opt into the Church of England’s Faculty Jurisdiction.

8.6 The Baptist Union asked why the Order exempts relevant denominations from section 74 of the Act. Section 74 provides that the demolition of an unlisted building in a conservation area can only take place with the consent of the Local Authority. Section 75 (1) (b) provides that section 74 does not apply to ecclesiastical buildings which are for the time being used for ecclesiastical purposes. It has been held (*Attorney General vs Trustees of the Howard United Reformed Church, Bedford*) that a building being demolished cannot meet the requirements of section 60(1) in being an ecclesiastical building which is for the time being used for ecclesiastical purposes, and that the demolition must therefore be subject to local authority consents. However, there may be circumstances where an ecclesiastical building is still in ecclesiastical use at a time when decisions are being made to demolish the building and therefore section 74 and 75 of the Act are still applicable.

9. Guidance

9.1 The Department and English Heritage publish guidance for owners of listed buildings and for local authorities. Guidance on the Ecclesiastical Exemption is being revised and a new version published in good time for the coming into force of this amendment.

9.2 In addition, the exempt denominations, umbrella groups of affected buildings and a large range of individual institutional chapels have been informed of the changes and given contact details. Two articles have appeared in a publication for local authority conservation staff.

10. Impact

10.1 The impact on business, charities or voluntary bodies is as follows. There is no impact on business. Some institutions e.g. schools or colleges, that care for chapels will be registered charities and will be required to submit to one of the consent regimes. We do not consider this to be an additional burden because such schools and colleges will already be required to apply to local authorities for consent to work on other listed buildings. Furthermore, applications for consent to works to buildings where no such consent was previously required are unlikely to be needed for any single building more than once per decade. Where a building becomes subject to secular controls, no fees apply to applications for consent. Where an election is made to be covered by denominational control, a fee applies to the submission of applications for consent.

10.2 The impact on the public sector is as follows. A new burdens assessment has been completed and assessed by the New Burdens Team at the Department for Communities and Local Government. While local authorities might face an additional burden of considering applications for consent to work from a small number of buildings where this was not previously required, this

burden is more than offset by the removal from local authority jurisdiction of separately listed curtilage and affixed structures of other ecclesiastical buildings.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 Successful outcomes which will be achieved by this measure will be the provision of protection for heritage buildings where none has applied since 1994, and the removal of dual control over a range of churchyard structures. An outcome whereby an impacted building considering works applies for the appropriate consents to the works will be considered a success, as will reductions in the administrative burden of caring for ancillary structures.

12.2 An informal review will be conducted after one year with selected local authorities and denominations to gauge whether there has been an increase in numbers of applications for consent to works, and with some individual institutional chapels to ascertain whether they are aware of the consents now required.

13. Contact

Jeremy Dann at the Department for Culture, Media and Sport, Tel: 020 7211 2348 or email: jeremy.dann@culture.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DCMS	Title: Impact Assessment of The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010	
Stage: Final proposal	Version: 1	Date: 1 February 2010
Related Publications: Name of guidance		

Available to view or download at:

<http://www.>

Contact for enquiries: Jeremy Dann

Telephone: 020 7211 2348

What is the problem under consideration? Why is government intervention necessary?

(A) Some listed ecclesiastical buildings, including many institutional chapels, do not currently require consents to carry out work. The Ecclesiastical Exemption from listed buildings controls normally applies to buildings covered by a denominational system of control. Intervention is necessary to provide protection from inappropriate development for buildings not currently protected. (B) A further change will widen the scope of the Exemption to separately listed ecclesiastical structures currently subject to both ecclesiastical and secular controls, thus reducing the burden of care.

What are the policy objectives and the intended effects?

(A) The policy objective is to ensure that listed ecclesiastical buildings are exempt from local authority listed buildings controls only where subject to a denominational control system. The effect will be to ensure that all listed ecclesiastical buildings are covered by development controls by providing that, where no election is made to be covered by a denominational system, local authority controls will automatically apply. (B) The objective is to reduce the administrative burden on faith groups and local authorities by removing 'dual control' over listed structures other than the church.

What policy options have been considered? Please justify any preferred option.

(A) the do nothing option would leave a range of listed buildings with no protection from unsympathetic building work. None of a range of partial solutions (involving different classes of building retaining the exemption without denominational cover) would achieve the outcome needed.

(B) the removal of separately listed structures from LA jurisdiction is a change long requested by church denominations in order to reduce burdens. We accept that denominational controls provide acceptable protection for church buildings, so such systems will provide adequate care for ancillary structures.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? A review of actual costs and benefits is not considered necessary as we are closing a loophole in line with long term policy intentions. No effective way of gauging actual costs/benefits.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Margaret Hodge

.....Date: 13 February 2010

Summary: Analysis & Evidence

Policy Option: 1	Description: Exemption only to apply where a denominational system has jurisdiction. Extend exemption to separately listed structures.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Where an building opts for coverage by the Church of England, a fee of £164 applies to consent applications for work. (No fee applies where LA systems apply). There is no way of telling how many buildings will opt each way. Where fees will apply, applications are not expected to be needed more than once per 10 years.
	One-off (Transition) Yrs	
	£ Minimal	
	Average Annual Cost (excluding one-off)	
£ Minimal	Total Cost (PV)	£ Negligible
Other key non-monetised costs by 'main affected groups' The managers of buildings who currently enjoy exemption from all controls will incur the administrative burden of applying for consents either from a denoninational system or the local authority.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Where churches currently have to seek dual consents for works to separately listed curtilage structures, they will now have a reduced burden as only one application will be needed. Local authorities will lose responsibility for consents to separately listed churchyard structures resulting in fewer applications and therefore reduced costs.
	One-off Yrs	
	£ Nil	
	Average Annual Benefit (excluding one-off)	
£ 260,000	Total Benefit (PV)	£ 260,000
Other key non-monetised benefits by 'main affected groups' Provision of heritage protection where it does not currently exist for an unquantified number of listed chapels and churches. Reputational benefit for DCMS in resolving longstanding loophole and risk to buildings.		

Key Assumptions/Sensitivities/Risks It is assumed that proposed works at affected chapels currently not covered by a consents regime will in any case be supported by professionally produced plans and drawings. A risk is that while every effort is being made to communicate the changes to affected bodies, some will not be reached.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ Nil	NET BENEFIT (NPV Best estimate) £ 260,000
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	1 June 2010
Which organisation(s) will enforce the policy?	Denominations/ LAs
What is the total annual cost of enforcement for these organisations?	£ minimal
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	N/A
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

1. The Planning (Listed Buildings and Conservation Areas) 1990 (“the Act”) provides that works to buildings listed as being of historical or architectural interest can proceed only after consent is received from a local authority. The Act provides for an exemption from such controls and associated offences for ecclesiastical buildings in ecclesiastical use, and for the Secretary of State, by means of an order, to restrict the operation of such an exemption.
2. The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994 (“the Order”) restricted the exemption for the most part to the buildings of the Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church, the United Reformed Church, the Baptist Union of England and the Baptist Union of Wales. These denominations operate internal systems of heritage control considered to provide equivalently stringent protection of listed places of worship to local authority controls.
3. Exemption from local authority controls is provided for in the Order for further classes of building that are not required to be covered by a denominational system of control. Such buildings are:
 - (i) buildings within a peculiar of the Church of England. (A Royal Peculiar is a church that belongs directly to the monarch and not to any diocese or province. Other extra-diocesan peculiars have mostly been subsumed into diocesan controls);
 - (ii) listed chapels used according to the rites of one of the exempt denominations, situated at schools, colleges, universities, hospitals, inns of court or other public or charitable institutions;
 - (iii) buildings of religious communities;
 - (iv) buildings subject to sharing agreements under the Sharing of Church Buildings Act 1969 ; and
 - (v) buildings in England of three Scottish denominations.
4. It was envisaged in 1994 that the exemption of buildings in the preceding paragraph would be temporary, and that, within 18 months, decisions would need to be made as to whether the buildings would become covered by a denominational system of control, or revert to local authority control. In the case of the Church of England it was necessary to pass the Care of Places of Worship Measure 1999 to enable institutional and other extra-diocesan chapels to be covered by the Church’s Faculty Jurisdiction (as its system of heritage protection is known). However, no timetable was ever set within which this election was to be made.
5. The amendment to the Order will provide that, except in a small number of exceptions, buildings will not be exempt from secular controls unless they are covered by a denominational system. Where no election is made to be covered by a denominational system of control, local authority controls will apply from the date of coming into force of the amendment.
6. The exceptions to this general rule are:
 - (i) Westminster Abbey and St George’s Chapel Windsor, each of which has a fabric advisory committee established with DCMS and English Heritage assistance and considered to provide equivalence of protection to secular controls
 - (ii) On an interim basis, Christ Church Cathedral, Oxford. Christ Church is the Cathedral of the diocese of Oxford, and the college chapel of Christ Church College, Oxford. The authorities have expressed a desire to retain the Ecclesiastical Exemption, but it is considered the appropriate regime is that enshrined in the Care of Cathedrals Measure (“the Measure”) rather than the faculty rules applicable to parish churches. Christ Church is currently specifically excluded from coverage by the Measure, and an amendment to this ecclesiastical legislation will be required when there is an opportunity. In the interim, exemption will be extended for the

building, subject to informal pursuance of the requirements of the Measure and the creation of a fabric committee.

- (iii) Exemption will continue for buildings in England of the Church of Scotland, as this is required by the Church of Scotland Act 1921
7. The 1994 Order provides that exemption does not apply to works to separately listed structures attached to or in the curtilage of listed church buildings. Denominations require applications for consent to works to such structures nonetheless, meaning that congregations face the burden of applying for two sets of consents (denominational and local authority) for works to such structures. Separately listed structures at churches might include table tombs, boundary walls, or lychgates. The proposed revision to the Order will remove such structures from local authority jurisdiction, so that the burden of caring for them is reduced.

Alternative Policy Options

8. Alternative policy options considered are:

- (i) The 'do nothing' option is not considered to be appropriate as this issue of unprotected buildings is a longstanding source of embarrassment to the Department and gives rise to the potential for inappropriate or unsympathetic developments to buildings of historic or architectural significance. It is not suggested that there have been widespread incidences of inappropriate works to buildings covered by the amendments, but the Department has been made aware of limited works undertaken at some buildings where consents would have been required had an appropriate regime been in place;
- (ii) A range of partial solutions would clearly be possible, extending the exemption for certain classes of buildings and not requiring coverage by a denominational system of control in order to retain exemption, but no partial solution would achieve the policy intention that, except in a very limited number of cases, no building is exempt from secular controls unless it is covered by a denominational system of control.
- (iii) In relation to the extension of the exemption to separately listed churchyard structures, there is clearly the option to maintain the status quo. However, denominations have long pressed for reductions in 'dual control', and it is considered that denominational systems, which are trusted to care for church buildings, can be left to care also for other churchyard structures, subject to the required consultation with local authorities among others. The Department and English Heritage are in favour of reducing the administrative burdens of caring for listed churches in order that congregations can divert attention to the routine maintenance and repair that staves off more major repair.

Burdens

9. We have no definitive numbers for the buildings currently invoking Ecclesiastical Exemption without being covered by a denominational system of control. We are aware of the more notable buildings- the Royal Peculiars, the chapels at colleges of Oxford, Cambridge and Durham Universities and significant chapels at some other colleges and some hospitals. Every effort has been made to communicate the proposed amendments to the managers of known impacted buildings, plus relevant umbrella groups.
10. We have made the assumption that, where building works are proposed to buildings currently exempt from all controls, a professional approach is adopted in that architects and other professionals are engaged, and that the costs that would be associated with producing the appropriate documents to support applications for consents are already being borne.
- 11 While there will be an unquantified administrative cost to submitting applications for consent to works, either to local authorities or to denominational bodies, there is currently no fee for the processing of an application for Local Authority Listed Building Consent. The fee for applying to the Church of England's faculty system for buildings opted into jurisdiction is £164, except in the case of shared church where no fee applies. Where buildings are to be opted into the faculty jurisdiction, the managers of such buildings will be made aware of such fees. Given that the fees are in effect

optional, depending on which regime a building is subjected to, and only incurred infrequently in relation to applicable works, the burden is negligible.

12. The Department's code of practice, which outlines for denominations the characteristics required of their internal systems of control in order to justify the retention of the exemption, requires that consultation takes place on applications with local authorities, amenity societies and English Heritage (English Heritage has indicated that it does not wish to be consulted over works to buildings listed at Grade II, which is the vast majority of listed buildings). The Church of England's faculty system (into which the vast majority of affected buildings will opt should they wish to retain the exemption) also encourages pre-application discussion with interested parties in order to reduce the chance of objections at the formal consultation stage. We consider that the requirement to formally consult and the encouragement of informal pre-application discussion will place a **minimal** extra burden on amenity societies, English Heritage and local authorities. All potential consultees have been given the opportunity to comment on the proposals. English Heritage and the Victorian Society signalled support for the changes and did not raise objections to any further burdens. No other amenity society or local authority raised objections to any new burdens.
13. The majority of buildings that opt to retain exemption by arranging coverage by a denominational system will opt into the Church of England's faculty jurisdiction. There will, therefore, be an additional burden on diocesan chancellors (decision makers) and on the Diocesan Advisory Committees (DACs) that advise them. This extra burden is considered to be **minimal** given that Chancellors and DACs already decide applications for works at hundreds of diocesan parish churches (the greatest impact is likely to be on the Diocese of Oxford, given the number of college chapels which may opt into diocesan control. The Diocese of Oxford has 814 churches, each of which will already need faculty consent to works. If every building that could opt to be covered by diocesan controls, this would add another 30 buildings to their caseload, but indications are that more will opt to be covered by the local authority. If by the same token, all relevant buildings reverted to secular control, 30 buildings would be added to an existing caseload of 1550 buildings, a minimal percentage increase. Works needing either consent are unlikely to be undertaken at a building more than once every 5-10 years.
14. In relation to the extension of the exemption to cover separately listed curtilage structures, it is estimated that around 50% of churches of Church of England churches might have such structures. This means that around 6500 structures will be removed from local authority controls. It is estimated by Communities and Local Government that an application for listed building consent costs around £400 to process. Assuming one application for consent every 10 years, annual savings across LAs would be £260,000, or £670 per authority.

Specific Impact Tests

15. Following consultation of the appropriate guidance (<http://www.berr.gov.uk/whatwedo/bre/policy/scrutinising-new-regulations/preparing-impact-assessments/toolkit/page44263.html>), the following tests are considered not to apply:

- Competition Assessment

The measure does not :
Directly limit the number or range of suppliers
Indirectly limit the number or range of suppliers
Limit the ability of suppliers to compete
Reduce suppliers' incentives to compete vigorously

- Small firms impact test

The regulation does not apply to small businesses or affect the business environment in which they operate

- Legal aid test

The measure does not introduce new criminal sanctions or civil penalties.

- Sustainable development
- Carbon assessment
- Other environment tests
- Health impact

The policy will have no significant impact on human health by virtue of its effects on Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture or Social cohesion

There will be no significant impact on Physical activity, Diet, Smoking, drugs, or alcohol use, Sexual behaviour, Accidents and stress at home or work.

The policy will not create significant demand on Primary care, Community services, Hospital care, Need for medicines, Accident or emergency attendances, Social services or Health protection and preparedness response

- Rural proofing

The policy will not have a different impact in rural areas, because of particular circumstances or needs

- Human rights

Equality Impact Assessment

16. Following screening, there is not considered to be a need for a full impact assessment in the following areas:
 - Race equality
 - Gender equality
 - Disability equality
 - Gender equality
 - Sexual orientation
17. However, the following should be noted in relation to **Religion or belief**. The ecclesiastical exemption currently applies to those denominations that have demonstrated that they have internal systems of heritage control that are equivalent to secular controls. These denominations are the Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church, the United Reformed Church, the Baptist Union of England and the Baptist Union of Wales. The current Order does not provide for the exemption to be extended to any other denominations or faith groups, but an amended order could provide for the exemption to cover other groups where the Department was convinced that adequate controls were being introduced. The Department, in consulting on the Heritage Protection Bill, sought comment on the possibility of extending the exemption to other groups, but no comment was received, nor any interest expressed in coming under the exemption in the future. There will remain the option for any group to apply for exemption.
18. The proposed amendment, therefore, only concerns institutional chapels where worship is according to the rites of one of the exempt denominations. It does not provide for institutional chapels where worship is according to the rites of any non-exempt denomination or faith group to become exempt from controls by opting into a denominational system of control. Listed chapels or

places of worship of other denominations or faith groups remain subject to secular listed building controls via the Local Authority.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

