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# The Role of the Faculty System in Achieving Net-Zero Carbon Emissions by 2030

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*The Church of England has committed itself to achieving net-zero carbon emissions by 2030. An important element required for success in this aim will be to amend the legislation around the management of church buildings and in particular the operation of the faculty jurisdiction. While aspects of the present system can and do facilitate some necessary change, to achieve the swift and widespread changes required within the timescale envisaged a more radical overhaul is required because the present faculty system favours the status quo, however bad that is from a carbon emissions perspective.*

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## INTRODUCTION

In February 2020 the General Synod of the Church of England set the ambitious but essential target for the Church to become a net-zero carbon emitter by 2030. This means that the ‘carbon’, a useful short-hand for the emissions of carbon dioxide and a bundle of other greenhouse gases, generated by the activities of the Church of England will be reduced to net zero within that timescale.<sup>2</sup>

In order to assess whether this target has been achieved, it will be necessary to have a clear definition of which emissions are in scope to be assessed. At the time of writing this is to be formally determined at the November 2020 Synod but it is unsurprising that the energy use of the Church of England’s buildings is the first major item that will be within scope, including churches, cathedrals, church halls, voluntary assisted and diocesan academy schools, clergy housing and church offices. Emissions from major building projects

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- 2 Definition taken from s 5 of the Church of England’s consultation paper ‘A national definition of “net zero carbon” for the Church of England, and our approach to measuring it’, <<https://www.churchofengland.org/sites/default/files/2020-06/Defining%20Net%20Zero%20-%20national%20guidance%20-%20version%20ready%20for%20consultation%20FINAL%20June%2015th%202020.pdf>>, accessed 20 October 2020.

including re-orderings of church buildings under faculty are not proposed to be in scope immediately, but are likely to be brought into scope before 2030.<sup>3</sup>

Also essential to the assessment process are agreed and workable assessment tools. The Church of England's National Research and Statistics Team publishes the Energy Footprint Tool to enable churches to assess their carbon emissions, and the Parish Buying Scheme gives access to a national energy audit programme. The Energy Footprint Tool is embedded into the revised electronic version of the parish return, which was launched softly in 2020 during the COVID-19 pandemic lockdown. At the time of writing this was already being used by around 4,500 churches.<sup>4</sup>

Almost all churches, and some church halls, are subject to the faculty jurisdiction. Many of the changes that need to be made to such buildings to achieve net zero will require the permission of a faculty to take place lawfully. Therefore, how this system operates and the legal framework upon which it is built will be important elements enabling the net-zero ambition to become reality. Different, secular regulatory systems control other buildings used by people and institutions that make up the Church of England over which the Church has less power and control. However, the faculty jurisdiction is within the control of the Church, subject always to the oversight of Parliament to ensure that the ecclesiastical exemption remains justified. It is to be hoped that, Parliament having also declared a climate emergency in May 2019, the Church of England's amending of the faculty system to take better account of the Church's commitment to net-zero emissions will not be controversial politically.<sup>5</sup> Indeed, any legal changes proposed by Measure will not become law without Parliamentary scrutiny and approval in any event.

As it presently stands the faculty system is not set up with carbon reduction in mind because it significantly pre-dates the recent widespread realisation of the urgency of the climate crisis. Nevertheless, some ground-breaking churches have managed to become carbon neutral, or much more nearly so, within the limits of the current system.<sup>6</sup> However, if the widespread change required is to take place within the timeframe envisaged by Synod, the faculty system

3 The direct emissions of work-related travel on Church business will be included, but this is not subject to faculty jurisdiction. Matters that are not proposed to be in scope at present but may be brought into scope at some point before 2030 are wider and also not subject to faculty jurisdiction, such as emissions from farming and management of Church lands, upstream emissions from items purchased and downstream emissions from waste disposal, and emissions from email use and data storage and from Church investments other than those controlled by the Church Commissioners, who have their own ethical and environmental investment policies.

4 Information from Catherine Ross, Open and Sustainable Churches Officer, Church Buildings Council. This is up already from the 3,000 reported in the *Church Times*, 3 September 2020.

5 'UK Parliament declare climate emergency', *BBC News*, 1 May 2019, <<https://www.bbc.co.uk/news/uk-politics-48126677>>, accessed 20 October 2020.

6 Notably St Michael, Baddesley Clinton in the Diocese of Birmingham and St Michael and All Angels, Withington in the Diocese of Gloucester.

and the legal rules for the management of church buildings more widely will require revision, not only so as not to prevent the necessary changes but also to actively encourage and, if necessary, compel them.

Consideration of the historical and architectural significance of our buildings must take place alongside the urgent carbon-reduction measures. In that context, it should not come as any surprise that the climate crisis is taken seriously by Historic England and amenity societies such as the Victorian Society and the Society for the Protection of Ancient Buildings, each of whose websites provides a wealth of material on how to introduce carbon-reduction measures with sensitivity to the historic buildings concerned. The front cover of Historic England's publication *Energy Efficiency and Historic Buildings: solar electric (photovoltaics)* comprises a large photograph of the solar panels on the roof of Gloucester Cathedral.<sup>7</sup> Early consultation by a parish with Historic England and relevant amenity societies when a project is being considered will often lead to a constructive way forward. After all, if some of the more serious consequences of the climate crisis are not avoided, much heritage will be lost. Further, if we reach the point of catastrophic climate breakdown the survival of our civilisation and even our species will be in question, rendering both heritage and church re-ordering projects irrelevant.

What follows below is a brief assessment of the Care of Churches and Ecclesiastical Jurisdiction Measure 2018 ('the 2018 Measure') and the Faculty Jurisdiction Rules 2015 (as amended by the Faculty Jurisdiction (Amendment) Rules 2019) ('the 2015 Rules') to identify: 'what works well', that is, which parts of this legal framework can already facilitate the necessary changes; 'what is problematic', that is, which parts are unfortunately preventing or discouraging such change; and 'proposals for change', that is, what revision to the legislation is required for this part of the legal framework of the Church of England to support the ambitious but essential target of net-zero carbon emissions within the next ten years.

## WHAT WORKS WELL?

### **Mission and public benefit**

The focus on the mission of the Church in the 2018 Measure provides an existing statutory justification for pushing forward with carbon-reduction measures. Section 35 requires that:

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to

7 Historic England, <<https://historicengland.org.uk/images-books/publications/eehb-solar-electric/>>, accessed 20 October 2020.

churches, must have due regard to the role of a church as a local centre of worship and mission.

This key purposive section is central to the positive framing of works to buildings to reduce carbon emissions as part of the mission of the Church. This gives impetus to carbon-reduction projects. Where a faculty application is required, those seeking to justify such works can appeal to the fifth of the Anglican Communion's Five Marks of Mission to justify their proposed actions, namely to strive to safeguard the integrity of creation, and sustain and renew the life of the earth. For example, in the case of *Re St Paul, Addlestone* a successful application to install solar panels on the roof of an unlisted Victorian Church, the parish argued that the justification for the application was not only to save money by generating part of their own electricity but also expressly 'to champion the environmental benefits of green sustainable power within the local community'.<sup>8</sup>

When determining faculty applications, chancellors do not come under section 35 of the 2018 Measure. Nevertheless, they are required by the *Duffield* questions to consider the extent of the harm to the historical and architectural significance of the building that would be caused if the proposals were permitted and to consider whether the public benefit of those proposals outweighs the level of harm to that significance.<sup>9</sup> The public benefit in avoiding climate breakdown caused by carbon emissions is increasingly becoming acknowledged as a mainstream view, no longer the preserve of climate scientists and environmental campaigners. As noted above, a climate emergency has been declared not only by the Church of England but also by the British Parliament. A total of 195 countries have signed up to the UN Paris Agreement on Combatting Climate Change, which came into force in November 2016; 189 of them have currently ratified it, including the United Kingdom.

Therefore, in a properly made-out case, the public benefit of carbon-reduction measures may be sufficient to outweigh the public benefit in avoiding harm to the historical and architectural significance of a church building, even a listed one.<sup>10</sup> For example, in *Re St Mary, Moseley* one of the arguments that found favour with the chancellor when granting the faculty for the installing of partially visible photovoltaic panels on a Grade II listed Church was that 'the church will

8 *Re St Paul, Addlestone* [2020] ECC Gui 1.

9 The case *Re St Alkmund, Duffield* [2013] Fam 158, a decision by the Court of the Arches, sets out the authoritative test that chancellors must apply when considering proposed changes to church buildings.

10 In a suitable case, other 'environmental' public benefits such as clean air from electric-vehicle charging posts, biodiversity from tree planting and locally grown food may also be relevant, as well as carbon emissions reduction.

be seen to be acting in accordance with the church's national stance on ecological issues and seeking to conserve energy resources'.<sup>11</sup>

### DAC expertise

One of the undoubted advantages to the Church of England of the faculty system in preference to the regulation of church buildings under the Listed Buildings Consent scheme is the free access by parishes to expertise and guidance via the diocesan advisory committees (DACs). These groups bring together people with expertise relevant to matters that parishes are likely to come across in their proposed works to their buildings and their contents, such as: knowledge of the history, development and use of church buildings; knowledge of Church of England liturgy and worship; knowledge of architecture, archaeology, art and history; and experience of the care of historic buildings and their contents. They also usually include experts in matters such as heating, security, stained glass, organs, trees, textiles, wildlife and bells.

The appointment of these experts and the areas of expertise that should be covered by them is governed by sections 36 and 37 and Schedule 2 of the 2018 Measure. At present no part of that expressly refers to the net-zero commitment, nor requires people with carbon-reduction or other environmental expertise to be among the membership. Nevertheless, the ability to co-opt members under Schedule 2 paragraph 5 has enabled some dioceses to add an environmental or sustainability adviser to their DAC. Further, there is nothing to prevent a diocese appointing, for example, a heating adviser who is expert in non-carbon or renewable heating, a person with particular expertise in carbon reduction in historic buildings or an architect specialising in low-energy buildings.

But there remains no obligation to have such expertise on a DAC. Without it, there are limits to the assistance that the DAC can give to parishes looking to pursue carbon-reduction plans that are suitable for their buildings, whether to encourage good practice or to avoid maladaptation. Nor, without the necessary expertise, can a DAC effectively challenge and help revise a re-ordering plan that would otherwise increase the carbon emissions of a church.

Where DACs do have such carbon-reduction or other environmental expertise and appreciate its interaction with heritage concerns, it is vital that the parishes know this.<sup>12</sup> Anecdotally, there are many parishes that do not feel there is any point in pursuing major carbon-reduction changes to their listed churches, as they anticipate that DACs will not support them.

<sup>11</sup> *Re St Mary, Moseley* [2011] Cardinal Ch (Birmingham).

<sup>12</sup> For example, Gloucester DAC have published a sustainability policy and their sustainability adviser offers free advice to churches. See <<https://www.gloucester.anglican.org/wp-content/uploads/2020/02/DAC-Environmental-Policy-2020.pdf>>, accessed 20 October 2020.

## Churchwardens and the PCC

The people with the most day-to-day responsibility for church buildings are the churchwardens, with the support of their parochial church councils (PCCs). Sections 49–51 of the 2018 Measure impose duties upon churchwardens and PCCs in respect of the protection and maintenance of the building and contents and the maintaining of records, with powers of archdeacons to inspect and intervene under sections 47, 48 and 52 to enforce these duties if necessary. As with DACs, nothing in this expressly speaks to the net-zero commitment, but that has not stopped some churchwardens and PCCs who take the climate emergency seriously working independently with their diocesan environment officer or with voluntary organisations such as A Rocha and the Eco Church Network to bring about significant change in the carbon footprint of the buildings for which they are responsible.

## Quinquennial inspections

Good maintenance of buildings is a mundane but vital weapon in the fight against carbon emissions. Keeping roofs watertight, gutters free-flowing, windows maintained, cracks repaired and boilers well serviced all ensures that heating energy use is kept to a minimum. Spotting larger problems at an early stage and remedying them with appropriate advice is essential for the efficient maintenance of a historic building, reducing the need for expensive and energy-intensive major repairs. This is achieved in respect of the Church of England's church buildings via the statutory regime of quinquennial inspections required under sections 45–48 of the 2018 Measure, whereby an appropriately qualified person reports on the condition of the fabric of the church building at least every five years, identifying the urgent and longer-term maintenance work required.<sup>13</sup>

The questions asked in the quinquennial inspection regime are determined by each diocese under the framework of section 45 of the 2018 Measure. Therefore, each diocese can amend these to increase the focus on questions around the carbon emissions generated by each church building without any requirement for legislative change. Some dioceses already have. The Church Buildings Commission Guidance Note on Commissioning Quinquennial Inspection Reports already expects that environmental sustainability (for example, lighting, heating, rainwater goods, suitability for renewables, opportunities to reduce heat loss through steps such as draught-proofing and insulation) will be covered by the quinquennial inspector. Further, the Ecclesiastical Architects and Surveyors Association is currently working with the Church Buildings Commission on a best-practice note to build environmental aspects into the quinquennial inspection.

<sup>13</sup> Usually an architect or buildings surveyor. 'Quinquennial inspector' is used as a shorthand hereafter.

### **Lists A and B**

The faculty system provides for certain minor works, such as in respect of maintenance and repair, to be undertaken without the need for a formal faculty order. Schedule 1 of the 2015 Rules (as amended) contains two lists of works to churches and churchyards that may be undertaken without a faculty. List A contains those that can simply be done by a parish without consultation with any person or body being required. They are subject to conditions to ensure that they are indeed minor works of repair or replacement of existing items. Therefore, the sort of ongoing good building maintenance that also reduces heating needs and hence carbon emissions, such as attending to gutters and drains, and mending damage to windows and doors that causes drafts, can simply be undertaken without further consultation being required.

List B contains a wider range of items that, while still fairly minor, are a little more significant, requiring consultation with and written approval from the archdeacon. Where an archdeacon must be consulted, he or she can direct a parish to take advice from the diocesan environmental officer or relevant members of the DAC where the proposals have implications for carbon emissions, so as to encourage best practice.

### **Additional matters orders**

A chancellor can provide for additional matters that are not included in List A and B to be undertaken without a faculty, under section 78 of the 2018 Measure. This can be either a general permission (like List A) or a permission subject to consultation with the archdeacon (like List B), and other conditions can also be imposed. Section 77(7) imposes limits on the extent of this—including, for example, nothing that could affect the character of listed buildings, impact on the archaeological importance of a building, disturb human remains or involve the disposal of various significant items. This provision has been used by chancellors in support of smaller environmental projects such as enabling people to grow food in churchyards (in raised beds away from graves) without the need for separate faculty applications in each case.

## **WHAT IS PROBLEMATIC?**

### **Counterproductive details**

There are some significant details in the operation of the Lists A and B that have recently changed in a way that is counterproductive in the quest for net-zero carbon. Important examples in this regard are replacement of boilers in all churches and replacement of roofing material in unlisted churches. The time when a boiler needs replacing is the ideal time to consider how to reduce the carbon footprint of the church's heating systems; if the roof is off, this is the

ideal time to install insulation to improve energy efficiency.<sup>14</sup> Both of these were List B items until the revision of the lists by the Faculty Jurisdiction (Amendment) Rules 2019, which moved them to List A. Now there is no requirement for parishes to seek the advice and permission of the archdeacon when undertaking these works, which reduces the opportunity for him or her to direct them towards carbon-reducing options.

At present, introducing a new form of energy-efficient, low- or zero-carbon heating system requires the additional transaction costs and time of a full faculty application, but replacing an existing type of inefficient fossil-fuel-powered boiler does not even require archidiaconal approval. This is even the case with regard to particularly environmentally problematic oil-powered boilers and their associated oil tanks. This means that parts of the faculty system currently nudge parishes away from the solutions that are needed in meeting the net-zero target. Changing this will make it harder to replace a broken boiler quickly, which could cause significant discomfort to church members, yet permitting a quick like-for-like replacement could tie a parish into unnecessary carbon consumption for 25 years. Dioceses may need to provide practical support to parishes to cope with a period without a boiler while necessary enquiries are made as to the most carbon-efficient solution for their church.<sup>15</sup>

### **Presumption in favour of status quo**

Those are small examples of a wider systemic problem with the legal provision in this area, in that it favours the status quo, however bad that is from a carbon emissions perspective. The *Duffield* questions confirm that, even where no harm to a building is caused by a proposal, the presumption that a chancellor must apply is still in favour of ‘things as they are’. The duties of churchwardens, PCCs, archdeacons and DACs in respect of managing and adapting church buildings do not expressly require the reduction of carbon emissions. Each can go lawfully about their respective roles in this regard without taking any steps at all to further the net-zero commitment of the Church of England.

Therefore, as things currently stand, where a particular parish with high carbon emissions is failing to address this, the route for change is only via any ‘soft power’ that can be brought to bear. Bishops, archdeacons and area deans can encourage both practically and theologically. Other churches and individuals can lead by example. Dioceses can seek environmental information on the (voluntary) parish return. But this only goes so far and only works well if

14 Specialist advice must be taken if considering insulation of historic buildings to ensure that the proposals do not cause additional problems, particularly with damp.

15 By encouraging the preparation for change to take place before the boiler breaks, and perhaps by having a supply of plug-in electric heaters or heated cushions to lend out in emergencies. Emergency faculties may be obtained very quickly once the replacement is identified.



the key leaders in a diocese prioritise this issue alongside all the other claims on their time and energy.

### **Lack of access to environmental expertise**

Among the professionals whose role it is to support parishes in their care of buildings, there is no duty to have expertise in carbon reduction and energy efficiency. Quinquennial inspectors are not currently required to have this, nor are any DAC members. Similarly, there is no requirement when presenting a petition for a faculty for the carbon emissions implications of the proposals to be assessed and that information provided to inform a chancellor's decision whether or not to approve the application.

This presents problems for those parishes willing to undertake carbon-reduction measures but lacking the knowledge and experience to achieve it without support and advice. For example, one church spent much time, money and energy replacing their fossil-fuel heating system with a biomass boiler that did not actually suit the heating requirements of the church, and which was eventually replaced with an under-pew heating system powered by electricity supplied on a 100 per cent renewable tariff. Access to the appropriate advice from their DAC might have enabled that costly mistake to have been avoided.

### **Carbon reduction is not an aim of the faculty system**

At present, the faculty system requires much justification for a carbon-reducing scheme to be approved, particularly if it harms the historic or architectural significance of the building. Conversely, it is hard for a chancellor to reject a potentially high-carbon-emission scheme that is justified on some other ground, particularly when he or she does not have the carbon emissions information provided so as to know what the carbon impact is of any particular proposal.

However, if there were simple legal obligations to promote carbon reduction on each person involved in the care of churches and at each stage of the faculty process, this should have the effect of normalising the assessment and reduction of carbon emissions when undertaking any works in respect of churches. It would also give leverage where enforcement is needed to ensure that all parts of the Church are taking their appropriate share of responsibility for achieving net-zero carbon. The following section makes some suggestions for changes that could be made to the current legislation to achieve this.

## **PROPOSALS FOR CHANGE**

### **Mission and public benefit**

Section 35 of the 2018 Measure should be amended to expressly require a person carrying out functions of care and conservation to also have due regard to the

commitment of the Church to achieve net-zero carbon emissions by 2030 and maintain it thereafter. This will make it clear that the Church of England is serious about achieving its aims; stating such a position in the purposive clause enables appeal to be made to it at every stage of building maintenance and development.

### **DACs and quinquennial inspectors**

Schedule 2 of the 2018 Measure should be amended to require carbon emissions reduction and other environmental expertise within DACs, as should section 35(6) in respect of the necessary qualifications of the quinquennial inspectors. The former could be immediate, as such expertise would be in addition to that already contained within DACs. It is appropriate that there should be a phased introduction of the latter, so as not to lose the expertise of existing architects, surveyors and others who are willing to add carbon-reduction expertise to their professional skills. Consultation with the appropriate professional bodies will be necessary to understand how such expertise could be, or may already be, accredited.<sup>16</sup>

If it were considered necessary, diocesan schemes for quinquennial inspections could also be required to include questions relating to carbon emissions reduction by amendments to section 45 of the 2018 Measure. One advantage of legislating for this rather than leaving it in diocesan control would be that standardised questions across the dioceses would make comparisons possible in more detail and on a wider range of environmental issues than is possible with the Energy Footprint Tool in the parish returns.

### **Churchwardens, PCCs and archdeacons**

Various amendments to existing legislation are required to make carbon reduction a positive legal duty for those taking on the main responsibility for maintaining church buildings. Section 49 of the 2018 Measure should be amended to add a duty upon churchwardens to maintain an accurate record of the Church's carbon emissions. This is now easily done via the Energy Footprint Tool. Being obliged to record and report on emissions will normalise the attention to carbon reduction widely among those responsible for day-to-day maintenance of church buildings, which is essential if the objective of net zero by 2030 is to be achieved.

Section 50 should be amended to require the churchwardens' report to the Annual Parochial Church Meeting to include the annual levels of emissions and the steps taken to reduce and/or offset these over the previous year. PCCs

<sup>16</sup> For example, the Royal Institute of British Architects declared a climate emergency in June 2019 and committed to developing an Ethics and Sustainable Development Action Plan, so is likely to be in a position to assist in this regard.

should have similar duties to work towards and then maintain net-zero carbon emissions added to their range of responsibilities set out in section 2 of the Parochial Church Councils (Powers) Measure 1956.

Having a duty to work towards achieving and maintaining net-zero carbon emissions will ensure that PCCs focus appropriately on this important work and take proactive steps to combat climate breakdown. It will be important to target this, so as not to overwhelm small churches with low emissions already struggling with governance requirements. I would therefore suggest that a threshold of carbon emissions is determined below which a PCC, having accurately measured and reported its carbon footprint, is not required to take action beyond low-carbon energy tariffs, offsetting and regular good building maintenance.

Archdeacons' powers of inspection and visitation should be extended to include where emissions reporting and reduction is not taking place, or where the reports are showing increasing carbon emissions. This gives the archdeacons additional authority to refer parishes to the diocesan environmental officer for advice and for assistance in complying with their responsibilities towards energy reduction.

### **Funding**

While some of the additional duties advocated above require little investment beyond time and energy of the people concerned, any major project to reduce carbon emission will also require financial resources, in some cases substantial ones. While it is beyond the scope of this article to consider this in detail, dioceses will need to assist parishes in identifying and accessing funding for carbon-reduction development. Nationally, the Church Commissioners' recognised expertise in environmentally sustainable development and investment could be made available, and some of the funds used to support the Church of England could be channelled towards assisting dioceses to resource the required changes.

### **Faculty procedure: Lists A and B**

As identified above, there needs to be some more attention given to the matters in Lists A and B so as to encourage emissions-reducing works and not to perversely incentivise the missing of opportunities to reduce carbon emissions. Specific proposed changes are as follows. Regarding List A:

- i. A1(6): adding insulation to pipework in a boiler room and the replacement of standard light bulbs by LED bulbs within the same fittings should be expressly permitted. While the present definitions can be interpreted to include these, making it clearly and unambiguously approved provides encouragement to undertake such works;

- ii. A1(7): the replacement of oil and gas boilers should not be permitted under List A at all and arguably the replacement of oil boilers and their associated tanks in paragraph A7(8) should not be permitted under List B either because of their particularly large carbon emissions and other environmental concerns. A positive case for (re-)installing a heating system using such a fuel source should be made, and the validity of such a case should then be tested by a chancellor. It is likely that government regulations on oil and gas boilers will be changing in the foreseeable future and it will be important to prevent parishes replacing fossil-fuel-burning items with like-for-like ones that may well become obsolete within the short to medium term;<sup>17</sup>
- iii. A8(1): the felling of a tree without a faculty should be conditional upon the planting of another tree or trees. This is because mature trees are so important for capturing and fixing carbon dioxide to prevent the carbon released by energy use adding to the atmospheric greenhouse gases. They would not necessarily have to be planted in the same churchyard if that is not practical. The parish could fund trees to be planted elsewhere and dioceses could give over a proportion of glebe land for tree planting by parishes and others. Therefore, cutting trees down without adequate replacement should always require greater justification.<sup>18</sup>

#### Regarding List B:

- i. B1(5): the installation of oil-powered boilers should be expressly excluded from Lists A and B for the reasons set out above. Consideration should also be given to archdeacons being able to permit a new condensing-flue position for more efficient gas-powered condensing boilers where there

17 The Heat Policy Commission Report from the Confederation of British Industry, *Net-Zero: the road to low-carbon heat*, July 2020, has made wide-ranging recommendations, including:

- i. A government-mandated, phased switchover from existing natural gas boilers to other solutions like heat pumps and hydrogen technologies, including heat networks;
- ii. From 2023 no new domestic oil-fired boilers to be installed;
- iii. After 2025 all new domestic boiler installations to be part of a hybrid system or be 'hydrogen-ready';
- iv. From 2035 all new heating installations to be low-carbon. No new natural-gas-burning boilers or systems should be installed and only net-zero compatible technologies like air-source or ground-source heat pumps, hydrogen-burning boilers or heat networks should be deployed.

See <<https://www.cbi.org.uk/media/5123/heat-policy-commission-final-report.pdf>>, accessed 20 October 2020.

18 A sapling will obviously remove far less carbon from the atmosphere than a mature tree for many years after it is planted, and therefore consideration of the adequacy of the replacement tree(s) must be considered. Chancellors, too, need to be more aware of the carbon emissions reduction significance of the removal of mature trees. Two faculties to remove trees have been recently granted without any apparent assessment of the carbon reduction lost by removing these trees or any condition of others being planted. See *Re All Saints, Marcham* [2020] ECC Oxf 1 and *Re St Mary, Chithurst* [2020] ECC Chi 1.

- is no or limited damage to historic fabric, as this is often a barrier to condensing boilers being installed;
- ii. B1(8): this should expressly permit the extension and adaptation of existing lighting systems to permit the use of low-energy/LED bulbs, subject to conditions as to the 'like-for-like' appearance of the fittings into which they are placed;
  - iii. B1(19): this should include the addition of draft-proofing materials to doors and windows, subject to appropriate conditions around appearance, reversibility and the continued functionality of the doors and windows;
  - iv. B1(20): consideration should also be given to including the installation of under-pew electric heaters within List B, at least where the pews are relatively modern;
  - v. B6(6): permission for bike stands could be extended to include e-bike charging points, subject to appropriate conditions around protecting historic fabric and archaeology while getting the electricity to the charging points.

Finally, consideration should be given to including the installation of electrical-vehicle charging points in List B, subject again to appropriate conditions to protect historic fabric and archaeology and with additional conditions around size and appearance. However, particular care in this area will need to be exercised to avoid encouraging the installation of technologies that may quickly become obsolete owing to the fast-changing electric vehicle market.

### **Faculty procedure: information on environmental impact of proposals**

Additional changes are needed to ensure that DACs and chancellors receive clear information about the carbon emissions implications of any applications that come before them. There is already provision under the 2015 Rules (as amended) for the parish to give to the DAC under Rule 4(2)(2)(b) and to the chancellor under Rule 5(3)(3)(e) 'any advice or other material relating to the environmental implications of the works or proposals'. However, in my view, this is not adequate. 'Environmental implications' is vague. While other environmental concerns are important, the focus on carbon reduction is essential and urgent. Also, a parish will only have 'any advice or other material' at present if it has actively chosen to seek out such advice or other material. What is needed is a positive duty to supply clear information as to the likely impact of the proposals upon a church's carbon emissions. This information will then need to be supplied both to the DAC and to the chancellor, so an obligation to provide such should be added into Rules 4(2) and 5(3).

Some clarity is needed around precisely what information is to be provided. Clearly it will be essential to provide information about the *operational* emissions

of the church: that is, the amount of carbon emissions that are required to run the church's activities. It will be necessary to set this out for the DAC and chancellor in relation to the situation prior to the proposed works and also to provide a realistic estimate of the level of emissions following completion of the works. This will be particularly significant in applications involving heating, lighting, roof work or re-ordering to facilitate a different pattern of usage of the building. It will also be relevant to the introduction or replacement of high-energy audio-visual equipment. Where increased energy use is being proposed, the plans for reducing the carbon emitted by the energy source to be used and/or for offsetting any increased carbon emission must be set out. These issues are already before the consistory courts and it would be of significant assistance to chancellors to have better information about the carbon emissions consequences when deciding them.<sup>19</sup>

However, there are also *transactional* carbon emissions caused by undertaking any significant project of work on a church building: for example, the emissions from the power used to do the works and fuel the travel of the contractors, the carbon costs of the manufacture and transport of the new materials used and the disposal of old materials, and the loss of carbon-reduction capacity by the removal of trees to make space for an extension. This is true whether the project is installing a new boiler or solar panels, a general re-ordering proposal or a simple application to install a kitchenette. At the time of writing it is not yet clear whether such transactional carbon costs are to be in scope for the first stage of the Church of England's commitment to achieving net-zero emissions; if not, it is likely that they will come into scope within the next decade. Therefore, a decision needs to be taken about whether transactional carbon costs should also be assessed and reported to the DAC and chancellor, together with the steps to be taken to mitigate and offset them.

I would suggest that for any significant project an assessment of the transactional carbon costs of the proposed project itself should be included in the information provided to DACs and chancellors, as well as the operational carbon costs both before and after the project. This would ensure that the public benefit or harm caused by the proposed works is fully assessed. It should also have the effect of ensuring that such projects are carried out as carbon-efficiently as possible. For example, are local craftspeople and materials being used where possible to avoid unnecessary travel of people and materials? Is existing historic fabric being retained and adapted for re-use to avoid further quarrying or tree felling?<sup>20</sup> If new materials are needed, are they sustainably sourced? Are new

19 In *Re St Michael and All Angels, Blackheath Park* [2020] ECC Swk 1, a faculty for floodlighting was granted on the basis that that it would be powered by electricity from a renewable source.

20 Adapting existing fabric may enable heritage and environmental concerns to align.

trees being planted or other offsetting measures being undertaken as part of the project?

This kind of interrogation particularly matters for applications specifically aimed to reduce carbon emissions. Is the level of energy use by a small church that is only used a few times a week such that carbon savings over the lifetime of a proposed new heating system are less than the carbon costs of the manufacture of that heating system? Where a replacement is needed, in some cases a more efficient gas boiler with increased insulation, a lower carbon gas tariff and reliable offsetting will release less carbon over its whole lifetime of manufacture, installation, use and disposal than, for example, an air-source heat pump system or biomass boiler. Provision of proper information reduces the risks of maladaptation.

For the transactional carbon costs of more major works to be regularly assessed and reported to the DAC and the chancellor, more sophisticated measuring tools will be required than the Energy Footprint Tool. However, at the time of writing I understand that such tools are being developed by the Church Buildings Commission. The timing of new legislative obligations coming into force would need to be co-ordinated with the availability of such tools.

### **Faculty jurisdiction: other suggestions**

Other possible changes to the Faculty Jurisdiction Rules could require a summary of the carbon impact of proposals to be included in the public notice, which would make the Church of England's commitment to net zero better able to be scrutinised by the public. A further change could give the chancellor the power to seek his or her own expert advice on carbon issues from a suitable source where the information supplied by a petitioner was inadequate.

### **New duty upon chancellors to have regard to the carbon emissions of proposals**

A new statutory duty should be imposed upon chancellors to have regard to the level of carbon emissions of a church and the impact upon them of the works proposed in a faculty petition. This would sit alongside the *Duffield* principles that currently provide the basis for determining most faculty applications. It would require chancellors to keep such issues front and centre when making their determinations and ensure that emissions reduction is given the proper weight in each case. It would also ensure that the requirement to provide information on the effect of proposals has real teeth, as chancellors would not be able to lawfully determine faculties without this information being supplied, so would have to insist upon it being provided before the case is determined.

However, despite the importance of carbon emissions reduction, it would not be appropriate for there to be either blanket approval of carbon-reducing measures or blanket rejection of any proposal that could increase carbon emissions. In all cases the total harm and benefits of any proposal must be considered and

weighed against each other. Both heritage and aspects of the mission of the Church unrelated to environmental issues remain vitally important and should continue to be considered and balanced against each other and against the carbon emissions effect of any proposals.

## CONCLUSION

It is clear that change is necessary to the Care of Churches and Ecclesiastical Jurisdiction Measure and the Faculty Jurisdiction Rules if the Church of England is to have the best chance of achieving the ambition to be a net-zero carbon emitter by 2030. Some changes are matters of detail, such as the items to be included in Lists A and B. Others are 'big picture' changes, such as the proposals that all involved in functions of care and conservation of churches have regard to the zero-carbon commitment and that chancellors similarly must have regard to carbon emissions when determining petitions.

In both cases, the extent to which the faculty process encourages or restricts the necessary changes will be essential to the achievement of net-zero carbon by 2030. As people who maintain church buildings take on new legal duties in respect of carbon reduction there will be renewed urgency to the commitment to take active steps to achieve such reduction. As chancellors' decisions are reported permitting even quite extensive works to be undertaken to achieve carbon reduction in ways that appropriately respect the heritage of the church building and wider mission of the church community, this will encourage other parishes and DACs to have a wider view of what 'will be permitted' and to invest the time and energy in seeking the carbon emissions reduction solutions most suitable for their situation. And as DACs discourage plans for extensive changes that significantly increase emissions and help parishes find more sustainable solutions, the commitment to net-zero carbon will be more thoroughly embedded in the culture of all dioceses.

It should also be clear that the faculty system alone is not sufficient to bring about the wider changes required for the Church of England to achieve net-zero carbon emissions by 2030, even of those items clearly in scope to be assessed. Many of the Church's buildings, notably cathedrals, schools, clergy housing and diocesan offices, which include some of the Church's highest emitters, are outside the faculty jurisdiction. Some emissions relate to travel on Church business which is not regulated other than via expenses claims policies. There is further work by General Synod required here to identify how to bring about the urgent legislative and other change required in these areas. Nevertheless, if the Church of England wishes to have expertise and credibility in contributing to change in those other areas where it is but one stakeholder among many when it comes to regulation, getting its own house in order by revising the



faculty system to properly take into account the need to reduce carbon emissions is essential.

Similarly, the Church of England has little direct influence on the behaviour of third-party contractors and the suppliers of goods and services. But if the duty to assess, report and reduce carbon emissions in the management and development of church buildings becomes obligatory, seeking out the most carbon-efficient contractors and suppliers will become normalised for many thousands of building maintenance and development projects around the country. This should not only help the Church of England play its part in reducing the extent of future climate change but should also assist in setting a wider culture that acknowledges the devastating reality of the impending climate catastrophe and takes urgent practical steps to avert it.