

How ready is the legal and governance framework in the United Kingdom to meet the challenge of climate change?



Sectoral summary: ecclesiastical law

Q1: Is climate change expressly recognised in the legal framework for the Church?

Currently, there is no recognition of climate change as such in the statutory framework of the Church of England. The Church of England is not subject, for example, to the Climate Change Act 2008. Nor does the Church's own legislation (Measures, Rules, Regulations and Orders) recognise climate change.

However, s 35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018 requires persons carrying out functions of care and conservation in relation to churches to have due regard to the role of the church as a local centre of worship and mission. The Church shares with the international Anglican Communion "Five Marks of Mission", one of which is *"To strive to safeguard the integrity of creation, and sustain and renew the life of the earth."* Another mark of mission is *"To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation"*; many Christians understand there to be a clear link between climate change and global social justice.

These wider mission objectives are capable of coming within the duty under s 35, insofar as they are susceptible of local implementation.

In February 2020, the General Synod of the Church of England passed a motion *"recognising that the global climate emergency is a crisis for God's creation, and a fundamental injustice ..."*. The motion, among other things:

- Called upon all parts of the Church of England to work to achieve year-on-year reductions in emissions and urgently examine what would be required to reach net zero emissions by 2030 in order that a plan of action can be drawn up to achieve that target.
- Requested progress reports every three years from the Environment Working Group and the National Church Institutions.

Like recent public pronouncements by the Archbishop of Canterbury on climate change, this resolution is of moral authority within the Church, though it is not a legal

instrument. Climate change has been expressly recognised in a number of first instance judgments of Consistory Courts in the faculty jurisdiction which regulates changes to consecrated buildings, mostly churches.

Q2: What are the main issues arising from climate change for the sector?

As above, climate change is of concern to the mission of the Church. Anglican Christians see stewardship of the created world as a duty owed to God and part of a necessary active concern for issues of justice for all, especially the poor and vulnerable. The main legal issues relate to the faculty jurisdiction concerning church buildings and the Church's investments - via the Church Commissioners and the Church of England Pensions Board. The faculty jurisdiction, as noted above, is the framework for regulating changes to churches, many of which are listed buildings and the closure and disposal of church buildings is regulated by the Mission and Pastoral Measure 2011. The Church Commissioners and Pensions Board are subject to fiduciary duties as charitable trustees. In the case of *Harries v. Church Commissioners for England* [1992] 1 WLR 1241, the High Court held that the Commissioners' primary object, as trustees, was the generation of money. Current Church Commissioners investment policy embodies a commitment to combating climate change which is judged to fall within the parameters of the *Harries* principle on business grounds.

Q3: What initiatives are taking place within the sector to further the goal of achieving Net Zero and how might other sectors learn from that?

The Church Commissioners and the Pensions Board, which control funds in excess of £10 billion, had already, before the Synod resolution, committed to their investment portfolios being net zero no later than 2050, in line with the Paris Agreement. They have explained to General Synod that, as asset owners and a fund manager with holdings across all aspects of the global economy, their journeys to net zero are reliant on influencing

change in the real economy and policy environment as a whole, rather than solely implementing carbon-saving measures themselves. They started to divest in 2020 from companies which they consider are not taking seriously their responsibilities to assist with the transition to a low carbon economy and have pledged to ensure that by 2023 they have divested from fossil fuel companies that are not prepared to align with the goals of the Paris Agreement, whilst simultaneously seeking and scaling up investments in renewable energy and low carbon technology.

With the support of officers of the Church Buildings Council, the Rule Committee of the General Synod is currently preparing secondary legislation to amend the Faculty Jurisdiction Rules 2015 to embed the carbon neutral agenda into faculty processes and to deregulate 'green' initiatives such as insulation of buildings, low energy lighting, energy-efficient heating, installation of renewables, electric car charging points and broadband for remote worship and meetings, whilst introducing greater procedural requirements and checks on like-for-like replacement of oil boilers. There is some read-across here to secular planning and listed building control and Historic England has been involved in the preparatory work. It is expected that draft secondary legislation will be put before General Synod in 2022. The Church Buildings Council and the Environment Working Group of the Church of England have also developed toolkits to enable parishes to measure their carbon footprint and to draw up action plans, work which now needs to be reported in churches' annual returns.

Q4: What initiatives are taking place within the sector to adapt to climate change and how might other sectors learn from that?

The initiatives set out above are also of relevance to climate change adaptation. The Church Commissioners' and Church of England Pension Board's leadership on ethical investment and co-operation with other funds could be inspirational for other charitable trustees. On the buildings front, the Church of England is responsible for a high proportion of the nation's most significant heritage buildings, some of which are vulnerable to the effects of climate change.

Q5: Is the regime effective in light of future challenges?

Such consistory court decisions as there have been so far demonstrate that chancellors (consistory court judges) will give weight to the carbon neutral agenda in considering applications and proposals. What has, so far, proved more elusive is the prevention of schemes, such as floodlighting or fossil fuel boiler replacements, which are likely to be inimical to the objective. Arguably, primary legislation needs to be amended to widen the scope of control which might be achieved under the Rules and/or to place chancellors under specific duties akin to those which apply to faculty determinations involving designated heritage assets (see St Alkmund, Duffield [2013] Fam 158 and The Role of the Faculty System in achieving Net-Zero Carbon by 2030, Humphreys (2021) 23 Ecc LJ 50).

Q6: What are the top additional interventions (of any kind) that would improve the legal and governance framework in the sector?

These are very much aspirations rather than current proposals and would have to secure the approval of General Synod and Parliament before becoming law.

1. Introduction of a duty in primary legislation (a Measure) requiring special regard to be had by all relevant persons to the achievement and maintenance of zero carbon in preparing, considering, advising on and determining petitions for faculty or applications to Archdeacons under List B of the Faculty Jurisdiction Rules.
2. Mandatory inclusion of an advisor with relevant environmental knowledge or qualifications on the statutory Diocesan Advisory Committee (responsible for advising parishes and chancellors on faculty petitions).
3. Mandatory inclusion of carbon emission reduction advice in statutory Quinquennial Inspection Reports on churches, coupled with express powers of visitation for archdeacons when parishes are failing to report or reduce their emissions.
4. Introduction of climate change-related duties within the new Mission and Pastoral Measure in relation to the construction of new church buildings and finding suitable uses when disposing of redundant churches.