

THE CHURCH IN WALES
Briefing Note
National Assembly for Wales
Constitutional and Legislative Affairs Committee

Background

The Church in Wales came into being on 31 March 1920 with the separation of the then four Welsh dioceses from the Church of England. From that point the Church in Wales has been an independent province of the Anglican Communion. The four original dioceses were St Asaph, Bangor, St David's and Llandaff. Subsequently the dioceses of Swansea and Brecon and of Monmouth were created comprising parts of the dioceses of St David's and Llandaff respectively.

At the time of its creation the Church in Wales was disestablished and, to a substantial measure, disendowed. The Welsh Church Act 1914 and the Welsh Church (Temporalities) Act 1919 gave it freedom to govern its own affairs. No changes made to the Canon Law of England since disestablishment apply to it. The Church in Wales has its own Canon Law based on pre-disestablishment English Canon Law as subsequently amended in accordance with its own procedures.

The Church in Wales and Marriage

The 1919 Act mentioned above includes a provision that "Nothing in this Act or in the Welsh Church Act 1914 shall affect the law with respect to marriages in Wales or Monmouthshire." Consequently the law regarding marriage in the Church in Wales is virtually identical to that in the Church of England. The Church in Wales has the right to register marriages and parishioners and those who can demonstrate a qualifying connection have a legal right to be married in their parish church. Marriage is not a devolved matter and accordingly any change to the law in respect of it is a matter for Parliament.

The Marriage (Same Sex Couples) Bill

The Statement made in the House of Commons by the Minister for Women and Equalities on 11 December about Same Sex Marriage was a cause of concern for the Church in Wales because at the time there appeared to be a misunderstanding about the wishes of the Church in Wales and possibly also about the legal position regarding marriages in the Church in Wales. However, since the Statement, the Government has worked with the Church in Wales to understand and accommodate its position in the Bill.

The principal concerns of the Church in Wales were twofold. The first was that the Bill should provide protection for the Church and its clergy until such time as the Church might change its Canon Law to permit the marriage of same sex couples. Clause 1 of the Bill provides that the duty of Church in Wales ministers to marry will not be extended to same sex couples. Protections for individual clergy are provided in the Bill although there are different legal opinions about their effectiveness.

The second concern was that the Church in Wales should be enabled to make its own decision as to whether to conduct same sex marriages. Provision is made in clause 8 for such a procedure which would be initiated by a resolution of the Church's Governing Body (its Synod).

The Church in Wales welcomes these provisions in the Bill. The second provision is necessary because of the unique position in which the Church finds itself regarding the marriage law. As indicated above, the law as it applies within the Church in Wales is virtually identical to that which applies in the Church of England. However, while the Church of England has the power to make legislation initiated by its General Synod, the Church in Wales, as a disestablished Church, has no such power. When the Church of England Marriage Measure 2008 changed the law on "qualifying connections" for marriage the change only applied to the Church of England. To make a similar change, the Church in Wales had to rely on a Private Member's Bill introduced in the House of Lords which subsequently became the Marriage (Wales) Act 2010. The Church in Wales welcomes the procedure set out in clause 8 of the Bill because it is anxious to avoid finding itself again dependent on Parliament for primary legislation should it wish to conduct same sex marriages at some point in the future.

The Church in Wales and Burial Grounds

The disestablishment of the Church in 1920 created many challenges, in particular, how burial grounds should be treated. Some ancient churchyards were transferred to the Representative Body at disestablishment but a large number were not. Within the Welsh Church Act 1914 there was provision, at the time of disestablishment, for burial grounds to be transferred to Local Authorities. In many cases Local Authorities did not accept them and most burial grounds continued to be cared for by the Church in Wales' parishes although still as a matter of law vested following disestablishment in the Welsh Church Commissioners.

The years between disestablishment and 1945 had proved that the Parishes were willing to care for the churchyards and rights of burial had been respected regardless of denomination. The mood before the Second World War became increasingly positive towards the Church in Wales retaining these burial grounds because of both the experience of the intervening years and the desire to wind up the Welsh Church Commissioners.

In 1944 the Representative Body communicated to the Government its willingness to accept the transfer of churchyards, including those which had become vested under the Welsh Church Act in local authorities. It being wartime, it was essential that the proposed legislation to enact any transfer was non contentious as parliamentary time could not be wasted.

The 1945 Act was passed unopposed and transferred responsibility for all remaining churchyards that had not passed to Local Authorities (700 of them) to the Church in Wales. There was no undertaking from the State or Local Authorities to contribute to costs.

The 1945 Act obliged the Representative Body to:

- 'maintain in decent order any burial ground' and to 'preserve for the enjoyment of the public the amenities of the locality in which the burial ground is situated' *Section 3.3*
- ensure 'no discrimination shall be made between the burial of members of the Church in Wales and of any other persons in any burial ground' *Section 4.1*

The Act also required that Burial Fees are approved by the Secretary of State (now, the Welsh Ministers). The Church in Wales is the only burial authority in Wales to have Government controlled burial fees.

The Act only applies to burial grounds as they existed in 1945 and placed no obligation on the Representative Body to provide for the extension of burial grounds or for new burials grounds when the existing grounds became full.

Under the Local Government Act 1972, Local Authorities in Wales have the power but not the duty to take over the maintenance of churchyards that are closed for burial (there being no more space). In England, Local Authorities have a duty to do so.

Under the Constitution of the Church in Wales, Parochial Church Councils are responsible for the maintenance and management of each church and churchyard albeit that ownership of the property rests with the Representative Body. Since 1945, parishes have tried to maintain churchyards as community assets. With falling congregations, fewer people able to undertake physical work, and little external financial support the burdens placed on Parishes by the 1945 Act have become very onerous. This is particularly true for churchyards that are closed (where there is no further income) or churchyards which surround redundant churches where the focus of the congregation is elsewhere.

It is interesting to note that:

- the Welsh Church (Burial Grounds) Act 1945 places a statutory duty on a disestablished church regarding burials without any financial compensation or support.
- the fees that can be charged for burials and related services by the disestablished church are controlled by the Welsh Government.
- When burial grounds are full, the obligation to maintain continues and there is no right to transfer responsibilities to the Local Authorities.

The Church in Wales and Ecclesiastical Exemption

The Church in Wales is a disestablished church but enjoys certain legal rights in relation to Listed Buildings and Conservation Areas.

Under the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, certain denominations are exempt from listed building and conservation area consent procedures. This exemption is granted because the various denominations have established 'acceptable internal procedures for dealing with proposed works to listed buildings and to unlisted buildings in conservation areas' (*The Ecclesiastical Exemption - What it is and how it works 1994 Dept. of National Heritage*).

The Church in Wales' internal procedure is called Faculty and consists of all such works being approved by a Diocesan Chancellor (a senior judge or barrister), who receives advice from a Diocesan Advisory Committee (DAC) in making a decision. The faculty system is operated as an internal judicial court process with rights of appeal etc. Consultations with Cadw and other amenity societies on proposed works are carried out regularly.

Each DAC employs a Secretary and consists of volunteer members offering expert advice from inside and outside the Church in Wales. There are usually around 12 members on each DAC, and thus it will be seen that this represents a significant body of expert opinion and help for the system. All costs of this system are met by the Church in Wales and this represents a significant saving to the taxpayer.

The Church in Wales and Statutory Education

There are 172 Church in Wales primary and secondary schools across Wales, serving 25,000 children and young people. The Church's education advisers, working alongside their Roman Catholic counterparts, enjoy a good working relationship with the Minister for Education and Skills and his team. However, this work (both in terms of education itself and in the use and sale of school sites) is made more difficult by the lack of a single reference point for Welsh law. A significant body of pre-devolution legislation in this area still applies to Wales, and any new proposals from the Welsh Government require careful drafting and consultation to ensure clarity of intention and that previous legislation is taken into account.

At the moment, we do have some concerns about the implications for Church schools of the Schools Standards and Organisation (Wales) Bill, and in particular the potential threat to the nature and status of Voluntary Aided schools posed by the proposed new power for local authorities to appoint additional Governors in certain circumstances. The Archbishop has been in correspondence with the Minister on this matter.

CA/AG/JL
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