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STATUTORY INSTRUMENTS

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**2000 No. 2047**

**The Faculty Jurisdiction Rules 2000**

**PART IV**

**MATTERS WITHIN THE CHANCELLOR'S JURISDICTION**

**Matters for Chancellor**

**12.**—(1) Unless otherwise provided in these Rules all faculty matters shall be dealt with by the chancellor.

(2) Any faculty granted by the chancellor in unopposed proceedings shall (subject to rule 36) be issued by the registrar in Form No. 5 in Appendix C together with a certificate in Form No. 6 in Appendix C to be completed in accordance with the requirement in the faculty.

**Requirements as to Notice of Petition**

**13.**—(1) If the chancellor directs or the law otherwise requires any person to be specially notified the registrar shall serve on him a copy of the public notice.

(2) The chancellor may order that relevant details from the public notice be published in such newspapers or other publications and within such period of time as the chancellor directs.

(3) Subject to the generality of rule 13(1), where it appears to the chancellor on preliminary consideration of the petition that the works for which a faculty is sought

- (a) involve alteration to or extension of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest, or
- (b) are likely to affect the archaeological importance of the church or archaeological remains existing within the church or its curtilage, or
- (c) involve demolition affecting the exterior of an unlisted church in a conservation area

then, unless it appears to the chancellor from the available information that each of the following bodies has previously been consulted about those works and has indicated that it has no objection or comment to make the chancellor shall direct that English Heritage, the local planning authority and such of the national amenity societies as appears to be likely to have an interest in the church or the works shall be specially notified in accordance with the criteria applicable to consultation set out in paragraphs 2, 3 or 4 of Appendix B as appropriate.

(4) In any case falling within

- (i) paragraph (3)(a) of this rule which affects a grade I or grade II\* listed church or the exterior of a grade II listed church, or
- (ii) paragraph 3(c) of this rule,

the chancellor shall direct that a notice stating the substance of the petition and giving a date by which any objection is to reach the registrar shall be published by the petitioners in a newspaper circulating in the locality and publication shall take place within 14 days of the giving of the direction, or within such other period as the chancellor may direct.

(5) If the chancellor considers that the works or proposals intended to be carried out in a churchyard will or may affect a grave or memorial maintained by the Commonwealth War Graves Commission the chancellor shall direct that the Commonwealth War Graves Commission be specially notified and the registrar shall pursuant to such direction serve on the said Commission a copy of the public notice.

(6) Where a body has been specially notified pursuant to paragraph (3) or (5) of this rule that body shall have a period of 28 days from the date of service of special notice within which to send to the registry and the petitioners a written notice of objection containing the information required by Form No 4 in Appendix C or to send comments to the registrar in respect of the proposed works.

(7) Where the petition is for a faculty for the partial demolition or demolition of a church and falls within section 17(2) or (3)(a) of the Measure

- (a) the registrar shall give notice in writing to the bodies specified in section 17(4)(b) and, if relevant, to the bodies specified in section 17(5)(a) of the Measure and the bodies concerned shall have a period of 28 days from the date of the notice within which to give advice or to send to the registry and the petitioners a written notice of objection containing the information required by Form No 4 in Appendix C in respect of the proposed partial demolition or demolition,
- (b) the notice stating the substance of the petition (which is required by section 17(4)(a)(ii) of the Measure to be published by the petitioners in the London Gazette and in such other newspaper as the chancellor may direct) shall be published:
  - (i) in the case of the London Gazette not more than 28 days after the petition was submitted to the registry,
  - (ii) in the case of such other newspapers (including a newspaper circulating in the locality) within such period as the chancellor shall direct or, if no period is directed, within 14 days of the giving of the direction.

(8) Where a petition relates exclusively to exhumation or reservation of a grave space or in any case where the chancellor gives directions in relation to a public notice or an amended public notice than subject to paragraph (9) below the registrar shall complete the public notice and give such directions for display of the public notice under rule 6(5)(b) to (d) as the registrar considers appropriate or as the chancellor has directed.

(9) In the case of petition for a faculty for exhumation, the chancellor shall have the following powers that is to say:

- (a) if the chancellor is satisfied that any near relatives of the deceased person still living and any other persons who in the opinion of the chancellor it is reasonable to regard as being concerned with the matter are the petitioners or that they consent to the proposed faculty being granted, then the chancellor may dispense with the issue of a public notice and decree the issue of the faculty immediately;
- (b) in any other case the chancellor may dispense with public notice and may direct that any of the persons referred to in sub-paragraph (a) above who are not the petitioners shall be specially notified.

(10) In any case where the chancellor is satisfied that a matter is an emergency that involves interests of safety or health, or the preservation of a church or part of it, and is of sufficient urgency to justify the grant of a faculty without obtaining the advice of the advisory committee, the chancellor

- (a) may dispense with the display of a notice under rule 6, and
- (b) having regard to all the circumstances may direct that a short period of notice be given to the persons or bodies identified in the directions,

and thereafter the chancellor may order the issue of a faculty immediately.

### **Advice of Advisory Committee**

14. Save where a petition relates exclusively to exhumation or reservation of a grave space or the chancellor is satisfied that the matter is sufficiently urgent to justify the grant of a faculty without obtaining the advisory committee's advice the chancellor shall not make a final determination in any cause of faculty without first seeking the advice of the advisory committee in respect of the works or proposals the subject of the petition, provided that where the advisory committee supplied a certificate in Form No 1 under rule 3(5) in respect of the same works or proposals not more than 12 months prior to the submission of the petition the advisory committee may, if appropriate, confirm that they do not wish to alter that certificate.

### **Consultation with the Council for the Care of Churches**

15.—(1) Paragraph (2) of this rule applies where a petition for a faculty—

- (a) concerns an article of particular historic, architectural, archaeological or artistic interest, and involves the introduction, conservation, alteration or disposal of that article,
- (b) involves the alteration to or extension of a listed church or re-ordering of any church, which is likely in the opinion of the chancellor significantly to affect (when completed) the setting of any such article as is described in sub-paragraph (a), or
- (c) involves the movement or removal of any such article, which in the opinion of the advisory committee may be adversely affected thereby unless specific precautions are taken.

(2) Where paragraph (1) applies then, unless the chancellor is satisfied that there has already been consultation with the Council for the Care of Churches in respect of the proposals the subject of the petition, insofar as they relate to the article in question, the chancellor shall direct the registrar to serve on the Council notice in Form No 9 in Appendix C.

(3) In any case not within paragraph 1 of this rule where the chancellor considers that advice from the Council would be of assistance in relation to a petition for a faculty, the chancellor may direct the registrar to serve on the Council notice in Form No. 9.

(4) Where notice in Form No. 9 is served under this rule, the registrar shall also serve on the Council a copy of the petition and such plans and other relevant documents which were submitted to the Registry under rule 4(1) as the registrar considers appropriate.

(5) The written advice of the Council in response to such a notice shall be sent to the registrar as soon as practicable but in any event no later than six weeks from the date of receipt of the notice; if no such advice is received within six weeks (or such longer period as may be granted on request from the Council), the chancellor may proceed to determine the petition without such advice.

(6) For the purposes of this rule, 'article' includes not only an ornament or moveable object but also an object fixed to land or a building, and a part of any such object.

### **Objections to Petition**

16.—(1) Any interested person who wishes to object to a proposed faculty being granted for all or some of the works or other proposals shall at any time during the period of 28 days display of public notice of the petition required by rule 6(4) or such longer period as may be directed under rule 6(5)(d) write to the registrar and to the petitioners a letter of objection so as to arrive within the period of 28 days.

(2) In this rule "interested person", in relation to a petition for a faculty, means—

- (a) any person who is resident in the ecclesiastical parish concerned and any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but who does not reside therein;
- (b) the archdeacon of the archdeaconry in which the parish concerned is situated;

- (c) the parochial church council;
  - (d) the local planning authority for the area in which the church or place of worship is situated;
  - (e) any national amenity society;
  - (f) any other body designated by the chancellor for the purpose of the petition; and
  - (g) any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition.
- (3) Following receipt of a letter of objection from an interested person (whether as to all or some of the works or proposals) the registrar shall after the end of the period of display of the public notice inform the objector in writing that he may:
- (a) leave the chancellor to take the letter of objection into account in reaching a decision without the objector becoming a party in the proceedings, in which case a copy of the letter of objection will be sent to the petitioners to allow them to comment on it before the chancellor reaches a decision, or
  - (b) send or deliver to the registrar formal written particulars of objection in Form No. 4 in Appendix C and thereupon become a party in the proceedings.
- (4) The registrar shall in addition
- (i) inform the interested person that unless he chooses alternative (b) in paragraph (3) above, he will not be entitled to be heard at any hearing of the matter in open court in the consistory court which the chancellor may decide to hold, nor to make written representations if the proceedings are to be dealt with under rule 26, nor will he be a party to the proceedings for the purpose of any order for costs which may be made by the chancellor under section 60 of the Ecclesiastical Jurisdiction Measure 1963;
  - (ii) inform the interested person that if he chooses alternative (b) in paragraph (3) above he will be entitled to participate in the proceedings at a hearing in the consistory court or in any disposal of the proceedings under rule 26 and that he will be a party to the proceedings for the purpose of any order for costs which may be made by the chancellor under section 60 of the Ecclesiastical Jurisdiction Measure 1963, and shall send him a brief statement in terms approved by the chancellor as to the principles which apply to costs in the consistory court; and
  - (iii) provide the interested person with a copy of Form No. 4 notifying him that if he chooses alternative (b) in paragraph 3 above he must send or deliver his completed Form No. 4 to arrive at the registry within 21 days of receipt of the letter of notification and form from the registrar and also serve a copy of his completed Form No. 4 on the petitioners within the same period of 21 days at such address as the registrar may direct, and
  - (iv) further inform the interested person that if no response and no Form No. 4 is received by the registrar within the period of 21 days as required by sub-paragraph (iii) above, he will be treated as having chosen the alternative course of action in paragraph (3)(a) and the matter will proceed accordingly.
- (5) Where any person has taken the course of action in paragraph (3)(a), or is to be treated as having done so under paragraph (4)(iv), then the registrar shall, after the expiry of the period of 21 days
- (a) forward a copy of any letter of objection to the petitioners for comment by them within 7 days, and
  - (b) not later than 7 days after expiry of the last date for comment, forward to the chancellor a copy of any letter of objection received under paragraph (1) above, together with any comments received from the petitioners.

(6) On receipt of any letters or comments forwarded by the registrar under paragraph (5), the chancellor shall take them into account in reaching a decision on the petition, or in giving any directions in the proceedings.

### **Unopposed Petition**

17. In a case where either no letter of objection has been received under rule 16 or, if such letter of objection has been received, no particulars of objection have been submitted within the time allowed by rule 16(4)(iii), or where the chancellor is satisfied that all the parties concerned consent to the grant of a faculty, the chancellor may, subject to the production of any relevant evidence, and subject to the requirements of section 17 of the Measure, grant the faculty.

### **Further pleadings**

18. Where particulars of objection have been submitted to the registry the petitioners may, and if ordered to do so shall, submit to the registry a written answer thereto within 21 days of the submitting of those particulars and shall serve a copy of the answer on each of the other parties.

### **Directions**

19.—(1) In any case the chancellor may give directions in writing without a hearing or may hold a hearing for directions which the parties or their representatives (whether or not legally qualified) and such other persons as the chancellor deems fit will be requested to attend. The chancellor or the registrar (if authorised by the chancellor) shall preside at any hearing for directions.

(2) The purposes of the giving of directions are:

- (i) to encourage the parties to co-operate with each other in the exchange of information and documents in preparation for a hearing;
- (ii) to fix timetables or otherwise control the progress of the proceedings;
- (iii) to identify the issues which will need to be resolved at a hearing;
- (iv) to deal with as many aspects of the matter as possible on the same occasion;
- (v) to give directions to ensure that the petition is considered and determined as quickly and efficiently as possible.

(3) Having regard to paragraph (2) above the chancellor or the registrar shall direct as appropriate:

- (i) how any evidence may be presented, whether by written statement or report followed by oral evidence at the hearing, or otherwise;
- (ii) where there is a large number of objections making a similar point or points in the written objections that a specified number of them shall represent the interest of all those objectors at the hearing and may appear by themselves or by representatives (whether or not legally qualified);
- (iii) that there be an exchange of the reports of expert witnesses to be called by the parties and that they be requested to identify matters upon which they agree and those upon which they disagree;
- (iv) that the number of expert witnesses to be called on behalf of any party be limited to such number as the chancellor or registrar deems appropriate in the case in question;
- (v) that any reports provided to the chancellor by the advisory committee, the Council for the Care of Churches, English Heritage, any national amenity society or any local planning authority or other body shall be copied to the parties not less than 21 days before the date of the hearing.

(4) In deciding whether and how to exercise the powers under this rule, the chancellor or registrar shall have regard to all the circumstances including:

- (a) the justice of the case;
- (b) the desirability of minimising dispute;
- (c) saving unnecessary expense;
- (d) avoiding delay;
- (e) the number of objectors and the grounds of objection to the proposals.

### **Time and Place of Hearing**

**20.**—(1) Within the period of 28 days after expiry of the last date of compliance with any directions given under rule 19 above or, where the case is one to which section 17(4)(d) of the Measure applies, the registrar shall lay all the documents submitted to the registry before the chancellor who shall give directions as to a time and place for the hearing of the case.

(2) In addition to notifying the parties the registrar shall send to the archdeacon, the Council, the advisory committee, and any other body which has given advice to the chancellor, written notice of the time and place of the hearing.

### **Evidence**

**21.**—(1) The evidence at the hearing of any proceedings for a faculty shall be given orally save that the chancellor upon application by a party or the court of its own motion may by order direct:

- (a) that all or any part of the evidence may be given before an examiner appointed by the chancellor or by affidavit, or
- (b) subject to paragraphs (2) and (3) below, that a written statement may be given in evidence without the attendance of the maker of the statement.

(2) An application to submit a written statement in evidence at the hearing may be made by or on behalf of any person who is not a party to the proceedings and the chancellor may give leave for a written statement to be admitted in evidence without the attendance of the maker of the statement provided that a copy of the written statement is submitted to the registry and that a copy is delivered by that person to the parties not less than 21 days before the date of the hearing.

(3) Notwithstanding anything in paragraph (1) above, the chancellor shall be entitled on receiving a copy of a written statement to require the attendance at the hearing of the maker of the statement for cross-examination by the parties, and if any party on receiving a copy of the statement applies to the chancellor for an order requiring the attendance of the maker of the statement at the hearing for cross-examination, the chancellor may make an order accordingly, and in the event of the failure of the maker of the statement to attend the hearing when required to do so under this paragraph, his written statement shall not be admitted in evidence save in exceptional circumstances with the leave of the chancellor.

### **Petition for Partial Demolition or Demolition**

**22.** An application to give evidence made by a member of the Council for the Care of Churches or other person by virtue of section 17(4)(d) of the Measure shall be made to the registrar and shall

- (a) if made by a member of the Council or a person authorised by the Council, be in Form No. 10 in Appendix C and be submitted to the diocesan registry not more than six weeks after the Council has received notice in writing of the petition under section 17(4)(b) of the Measure;
- (b) if made by any other persons, be in Form No. 11 in Appendix C and be submitted to the registry not more than four weeks after the date of the last publication in accordance with rule 13(7) of the notice stating the substance of the petition;

- (c) be accompanied in either case (a) or (b) with a statement of the evidence to be relied upon.

### **Evidence of Council for the Care of the Churches**

23. In any case not falling under rule 22 an application to give evidence may be made by a member of the Council for the Care of Churches or other person authorised by the Council to the registrar in Form No. 10 in Appendix C and be submitted to the diocesan registry not less than 21 days before the hearing and shall be accompanied by a statement of the evidence to be relied upon.

### **English Heritage**

24. In any case where English Heritage has been specially notified pursuant to rule 13(3) or in any other case an application to give evidence may be made by English Heritage to the registrar in Form No. 10 in Appendix C and be submitted to the diocesan registry not less than 21 days before the hearing and shall be accompanied by a statement of the evidence to be relied upon.

### **Judge's Witness**

25.—(1) The chancellor may direct the attendance of a member of the advisory committee, the Council for the Care of Churches or any other person to give evidence at the hearing of any petition for a faculty, if it appears to the chancellor that the person directed to attend may be able to give relevant evidence and is willing to give it.

(2) Where any person has applied in accordance with rule 22, 23 or 24 or has been directed under paragraph (1) to give evidence in proceedings for a faculty, the registrar shall give to the parties to the proceedings not less than 14 days' notice in writing that the evidence is to be given and of the name and address of the proposed witness and, in the case of a witness directed under paragraph (1) of this rule, of the nature of the evidence required of him.

(3) Evidence given by any such person as is referred to in paragraph (2) of this rule shall be subject to cross-examination by the party or parties to the proceedings and any such witness may be permitted to ask questions of the party or parties with the leave of the chancellor.

### **Disposal of Proceedings by Written Representation**

26.—(1) If the chancellor considers it expedient to do so and is satisfied that all the parties to the proceedings have agreed in writing, then the chancellor may order that the proceedings shall be determined upon consideration of written representations instead of by a hearing in court provided that no such order may be made in any case in which the chancellor is required to hear evidence in open court for the purposes of section 17(2) or 3(a) by virtue of section 17(4) of the Measure

(2) Where an order has been made by the chancellor under paragraph (1) above the registrar shall give notice

- (a) that the petitioners shall submit to the registry and serve on each of the other parties within 21 days of the direction a written statement in support of their case including the documentary or other evidence upon which they wish to rely;
- (b) that each of the other parties shall not more than 21 days after the submitting of the petitioners' statement submit to the registry and serve on the petitioners a written statement in reply to the petitioners' statement and in support of his case including any documentary or other evidence upon which he wishes to rely;
- (c) that the petitioners may not more than 14 days after the submitting of the statement of an opposing party submit to the registry and serve on such opposing party a written statement in response.

(3) If any party does not comply with any such direction, the chancellor may declare him to be in default and may proceed to dispose of the case without any further reference to such party.

(4) Any party against whom an order declaring him to be in default is made may at any time apply to the court to revoke that order, and the chancellor may as a matter of discretion revoke the order on such terms as to costs or otherwise as may be just.

(5) Notwithstanding the existence of an order that the proceedings shall be dealt with by written representations, the chancellor may at any stage revoke the order and direct that the proceedings shall be determined at an oral hearing and the chancellor shall thereupon give directions for the future conduct of the proceedings.

(6) The chancellor may, whether or not an application is made to the court by any party, inspect the church or any article or thing the subject of the petition or concerning which any question arises in the proceedings.

(7) If no order has been made under paragraph (5), the chancellor shall determine the proceedings upon the pleadings and the written statements and evidence submitted under this rule, and the chancellor's decision shall be as valid and binding on all parties as if it had been made after an oral hearing.

(8) The chancellor or the registrar (if so authorised by the chancellor) may give such other directions as appear just and convenient for the expeditious dispatch of proceedings under this rule.

#### **Issue of Faculty after opposed proceedings**

**27.** If the chancellor decides to grant a faculty following either an oral hearing or a determination on the basis of written representations under rule 26 the registrar shall issue a faculty in Form No. 5 in Appendix C adapted to meet the circumstances of the case and shall issue a certificate in Form No. 6 in Appendix C to be completed in accordance with the requirement in the faculty.