
 STATUTORY INSTRUMENTS

1987 No. 2266

ECCLESIASTICAL LAW, ENGLAND

The Faculty Jurisdiction (Amendment) Rules 1987

<i>Made (approved by the General Synod) - -</i>	<i>10th November 1987</i>
<i>Laid before Parliament</i>	<i>8th January 1988</i>
<i>Coming into force</i>	<i>1st April 1988</i>

In pursuance of section 14 of the Faculty Jurisdiction Measure 1964(a) the Rule Committee constituted in accordance with the Schedule to the said Measure hereby make the following Rules:-

1.—(1) These Rules may be cited as the Faculty Jurisdiction (Amendment) Rules 1987 and shall come into force on the first day of April 1988.

(2) In these Rules a rule referred to by number means the rule so numbered in the Faculty Jurisdiction Rules 1967(b).

(3) The Interpretation Act 1978(c) shall apply for the interpretation of these Rules as it applies for the interpretation of Measures passed by the General Synod.

2. In rule 2(1) there shall be added at the end the following definitions—

“period of citation” means the period during which a citation issued under paragraph (1) of rule 5 is required to remain in position under that paragraph.

“statutory amenity society” means any of the following, the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society, and such other body as may be designated by the Dean of the Arches as a statutory amenity society either generally or for the purpose of any class of application for faculty.”

3. In rule 3(4) for the words from “and shall be affixed” to the end of the paragraph there shall be substituted the words “and, for a continuous period of not less than ten clear days including two Sundays, shall be displayed—

(a) In the case of an application relating to a parish church—

- (i) on a notice board or in some other prominent position inside that church, and
- (ii) on a notice board outside that church,

(b) in the case of an application relating to a church or place of worship which is not a parish church—

- (i) on a notice board or in some other prominent position inside that church or place of worship, inside the parish church or parish churches in the parish concerned and inside any other church or place of worship in that parish as the registrar may direct, and

(a) 1964 No. 5.
(b) S.I. 1967/1002.
(c) 1978 c. 30.

- (ii) on a notice board outside the church or place of worship to which the application relates, outside the parish church or parish churches in the parish concerned and outside any other church or place of worship in that parish as the registrar may direct;

and if there is no notice board within the grounds of any building mentioned in sub-paragraph (a)(ii) or (b)(ii) above, the notice required to be displayed outside that building under those sub-paragraphs shall be displayed on the outside of the principal door of that building.”.

4. For rule 5 there shall be substituted the following rule:—

“Requirements as to Notice of Petition

5.—(1) The registrar shall lay every petition for a faculty and its supporting documents before the judge who if he considers it a fit case shall direct that a general citation shall issue in Form No. 7A set out in the Appendix, and shall require a copy of the citation to be displayed for a continuous period of not less than ten days including two Sundays or such other longer period as the judge may direct—

- (a) In the case of a petition relating to a parish church—

- (i) on a notice board or in some other prominent position inside that church, and

- (ii) on a notice board outside that church,

- (b) in the case of a petition relating to a church or place of worship which is not a parish church—

- (i) on a notice board or in some other prominent position inside that church or place of worship, inside the parish church or parish churches in the parish concerned and inside any other church or place of worship in that parish as the registrar may direct, and

- (ii) on a notice board outside the church or place of worship to which the application relates, outside the parish church or parish churches in the parish concerned and outside any other church or place of worship in that parish as the registrar may direct;

and if there is no notice board within the grounds of any building mentioned in sub-paragraph (a)(ii) or (b)(ii) above, the notice required to be displayed outside that building under those sub-paragraphs shall be displayed on the outside of the principal door of that building.

(2) The judge, if he considers it desirable and practicable so to do, may require a copy of the citation to be displayed in some prominent position elsewhere in the parish concerned (whether inside or outside a building) where it will be clearly visible to the public.

(3) If the judge directs or the law otherwise requires any person to be specially cited the registrar shall serve on him a copy of the citation.

(4) The judge if he thinks fit may order that notice of the citation be published in such newspapers or other publications as he directs and in such form as he directs.

(5) Upon the expiry of the period of citation the citation or a copy thereof shall be returned to the registrar with a certificate of execution duly completed thereon in accordance with Form No. 7A in the Appendix.

(6) Notwithstanding anything in paragraph (1) of this rule, in the case of a petition for a faculty for the exhumation of any human remains, the judge shall have the following powers that is to say:

- (a) if he is satisfied that any near relatives of the deceased person still living and any other persons who in the opinion of the judge it is reasonable to regard as being concerned with the matter are the petitioners or that they consent to the proposed faculty being granted, he may dispense with the issue of a citation and decree the issue of the faculty forthwith;

- (b) in any other case he may dispense with the issue of a general citation and may direct that any of the persons referred to in sub-paragraph (a) above who are not the petitioners shall be specially cited.

(7) Where the petition is for a faculty for the demolition or partial demolition of a church the notice stating the substance of the petition (which is required by section 2(1)(i)

of the Measure to be published by the petitioners in the London Gazette and in such other newspaper as the court may direct) shall be published:

- (a) in the case of the London Gazette not more than four weeks after the petition was lodged at the registry,
 - (b) in the case of such other newspapers within such period as the judge shall direct or, if no period is directed, within fourteen days of the giving of the direction.
- (8) (i) Where the petition is for a faculty for the disposal of an article which in the opinion of the judge is or may be an article of historic or artistic interest, he may direct the registrar to serve notice in writing of the petition on the Council for the Care of Churches; and where the judge gives such a direction, he shall direct the petitioner to serve on that Council a copy of the petition and of the accompanying documents which were lodged in the diocesan registry under rule 4(5).
- (ii) In this rule "article" may include not only an ornament or moveable object but also a part of a building, any thing affixed to land or a building and any part of an article.

Objections to Petition

5A.—(1) Any interested person who wishes to object to a proposed faculty being granted shall at any time during the period of citation or within seven days after the expiry of the said period send to the registry and to the petitioners a written notice of objection containing the information required by Form No. 7A in the Appendix and he shall thereupon be treated as a party opponent for all purposes including any order for costs which may be made by the judge pursuant to section 60 of the Ecclesiastical Jurisdiction Measure 1963(a).

- (2) In this rule "interested person", in relation to a petition for a faculty, means—
- (a) any person who is resident in the parish concerned and any person whose name is entered on the electoral roll of the parish concerned but who does not reside therein;
 - (b) the archdeacon of the archdeaconry in which the parish concerned is situated;
 - (c) the local planning authority for the area in which the church or place of worship is situated;
 - (d) any statutory amenity society;
 - (e) any other body designated by the judge for the purpose of the petition; and
 - (f) any other person appearing to the registrar to have a lawful interest in the subject matter of the petition.

(3) Where any interested person has given notice of objection, the registrar shall direct him to lodge at the registry written Particulars of Objection setting out in detail the grounds of his objection on Form No. 7B in the Appendix and shall require him to serve a copy of his Particulars of Objection on the petitioners not more than twenty-one days from the date of the registrar's direction.

(4) In a case where either no notice of objection has been given under paragraph (1) above or, if such notice of objection has been given, no Particulars of Objection have been lodged within the time allowed, or where the judge is satisfied that all the parties concerned consent to the grant of a faculty, the judge may, subject to the production of such evidence (if any) as he may require, and subject to the requirements of section 2(1) or section 4 of the Measure, grant the faculty.

(5) Where Particulars of Objection have been lodged at the registry the petitioners may and if ordered to do so shall not more than fourteen days after the lodging of those Particulars lodge at the registry an Answer thereto and shall serve a copy thereof on each of the parties opponent.

(6) If any party objects to any pleading of an opposing party, or to any part of any such pleading as being irrelevant, embarrassing, or bad in law he may, not more than fourteen days after it has been sent to him, lodge at the registry a notice in writing setting

out his reasons for objecting thereto and he shall at the same time serve a copy of the said notice on the parties opponent; and a party whose pleading is so objected to may not more than fourteen days after the lodging of the said notice lodge in the registry and serve on the opposing party an amended pleading.

(7) Where objection has been taken to any pleading (including an amended pleading) under the last foregoing paragraph and no amended pleading has been lodged in respect of that objection within the time allowed the registrar shall lay the pleading before the judge, who shall either appoint a day to decide as a preliminary issue the matters raised by the objection or reserve them for decision at the general hearing of the case.

(8) If any issue raised by the pleading remains outstanding after the pleadings are closed the judge or the registrar if authorised by the judge shall give such directions to the parties as he may think fit in relation to discovery of documents, the number of expert witnesses to be called on behalf of any party, the exchange of reports of expert witnesses and any other matter which he considers will facilitate the hearing of the case.”.

5. For rule 6 there shall be substituted the following rule:-

“The Hearing

6.—(1) Where the period of twenty eight days from the time given for compliance with any directions given under paragraph (8) of rule 5A above has expired or where the case is one to which section (2)(1)(iv) of the Measure applies, the registrar shall lay all the documents lodged at the registry before the judge, who shall appoint a time and place for the hearing of the case.

(2) In addition to notifying the parties the registrar shall send to the archdeacon and, if it has considered the case the Diocesan Advisory Committee, written notice of the time and place of the hearing.

(3) The evidence at the hearing of any proceedings for a faculty shall be given orally save that the judge upon application by a party or of his own motion may by order direct;

(a) that all or any part of the evidence may be given before an examiner appointed by him or by affidavit, and

(b) subject to paragraphs (4) and (5) below, that a written statement may be given in evidence without the attendance of the maker of the statement.

(4) 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 judge may, if he thinks fit, 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 lodged at the registry and that a copy is delivered by that person to the parties not less than twenty-one days before the date of the hearing.

(5) Notwithstanding anything in paragraph (3) above, the judge 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 judge for an order requiring the attendance of the maker of the statement at the hearing for cross-examination, the judge 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 judge.

(6) An application to give evidence made by a member of the Council for the Care of Churches or other person by virtue of section 2(1)(iv) 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. 8 in the Appendix and be lodged at the diocesan registry not more than six weeks after the Council has received notice in writing of the petition under section 2(1)(ii) of the Measure;

(b) if made by any other person, be in Form No. 9 in the Appendix and be lodged at the registry not more than four weeks after the date of the last publication in accordance with rule 5(7) of the notice stating the substance of the petition.

(7) Where notice in writing of a petition has been served on the Council for the Care of Churches under rule 5(8)-

- (a) a report by the Council on the matter to which the petition relates may be made and sent to the judge within six weeks after the date on which the Council received notice of the petition; or
- (b) an application to give evidence in the proceedings may be made by a member of the Council or a person authorised by the Council, and any such application shall be in Form No. 9A set out in the Appendix and shall be lodged at the diocesan registry not more than six weeks after the said date.

(8) The judge may of his own motion direct the summoning of a member of the Diocesan Advisory Committee or any other person to give evidence at the hearing of any petition for a faculty, if he considers that the person summoned may be able to give relevant evidence and is willing to give it.

(9) Where any person has applied in accordance with paragraph (6) or (7) of this rule, or has been summoned under paragraph (8) thereof, to give evidence in proceedings for a faculty, the registrar shall give to the parties to the proceedings not less than seven clear 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 summoned under paragraph (8) of this rule, of the nature of the evidence required of him.

(10) Evidence given by any such person as is referred to in paragraph (9) of this rule shall be subject to cross-examination by the party or parties concerned.

(11) The substance of any report made to the judge by the Council for the Care of Churches under paragraph (7) of this rule shall be disclosed to the parties to the proceedings."

6. After rule 6 there shall be inserted the following rule:—

"Disposal of Proceedings by Written Representations

6A.—(1) Except in any case in which the judge is required to hear evidence in open court under section 2(1) of the Measure, the judge, if he considers it expedient to do so and is satisfied that all the parties to the proceedings have agreed in writing, may order that the proceedings shall be determined upon consideration of written representations instead of by a hearing in court.

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

- (i) that the petitioners shall lodge at the registry and serve on each of the parties opponent within twenty-one days of the direction a written statement in support of their case including the documentary or other evidence upon which they wish to rely;
- (ii) that each of the parties opponent shall not more than twenty-one days after the lodging of the petitioners' statement lodge at 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;
- (iii) that the petitioners may not more than fourteen days after the lodging of the statement of an opposing party lodge at the registry and serve on such opposing party a written statement in response thereto.

(3) If any party does not comply with any such direction, the judge may declare him to be in default and may thereafter 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 judge may in his 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 judge may if he thinks fit at any stage revoke the order and direct that the proceedings shall be determined at an oral hearing and he shall thereupon give directions for the future conduct of the proceedings.

(6) If no order has been made under paragraph (5), the judge shall determine the proceedings upon the pleadings and the written statements and evidence submitted to

him under this rule, and his decision thereon shall be as valid and binding on all parties as if it had been made after an oral hearing.

(7) The judge or the registrar (if so authorised by the judge) may give such other directions as to him appear just and convenient for the expeditious despatch of proceedings under this rule.”.

7. After rule 11 there shall be inserted the following rule:—

“Appointment of person to sit as clerk of the court in place of registrar

11A. If the judge by whom any proceedings for a faculty are to be heard is of opinion that by reason of the fact that the registrar has acted for any of the parties or has otherwise been personally connected with the proceedings he ought not to sit as clerk of the court at the hearing, he shall appoint another practising solicitor to sit as such clerk in place of the registrar.”.

8. In the Appendix to the Faculty Jurisdiction Rules 1967 in place of Form No. 7 there shall be substituted and inserted Forms No. 7A and 7B in the Appendix to these Rules and after Form No. 9 there shall be inserted Form No. 9A set out in the Appendix to these Rules.

9. The Faculty Jurisdiction (Amendment) Rules 1975(a) are hereby revoked.

G. H. Newsom
(Chairman)
S. M. C. Cameron
T. A. C. Coningsby
T. E. Evans
B. J. T. Hanson
L. P. M. Lennox
R. R. V. Nicholson
John Owen
F. E. Robson
Peter Truron

Dated this 2nd day of October 1987

Approved by the General Synod this 10th day of November 1987.

W. D. Pattinson
Secretary-General

APPENDIX

FORM No. 7A

Rule 5(1)

GENERAL CITATION AND NOTICE OF OBJECTION

AB, Chancellor of the diocese of _____, To the incumbent and churchwardens
of the parish of _____ . Whereas a Petition has been lodged in the registry of
the Consistory Court of the diocese by XY praying for a Faculty to issue authorising the following works
and purposes, that is to say:-

Incumbent or
Churchwarden
to specify date
17 days after
copy of
Citation is first
affixed.

By this citation all persons having or claiming to have a lawful interest in the subject matter of the petition
are hereby required, if they or any of them wish to object to the grant of a Faculty for the works or
purposes stated above, to deliver or send to the Diocesan Registrar at
a written notice of objection using the form of words set out below so as to reach him not later
than

And take notice that if no valid notice of objection has been given to the Diocesan Registrar within
the time prescribed above a Faculty may be granted for the works or purposes aforesaid or otherwise
as the Consistory Court of this diocese may think fit.

Dated this _____ day of _____ 19

Signature of Registrar

Notice of Objection

I of

wish to object to the grant of a Faculty authorising the proposed works or purposes to be carried out.

(Note: Copy and use whichever of the following is applicable):-

"I have an interest in the subject matter of the petition as

[a parishioner(s) of the said parish]

[a person whose name is entered on the electoral roll of the said parish]

[an officer of the local planning authority in whose area the church (place of worship) lies]

[an officer of a statutory amenity society, namely the _____ society]

[a _____ (state any other interest not in preceding examples)]".

Dated this _____ day of _____ 19

Signature of objector

(Note: on receipt of your notice of objection the Diocesan Registrar will send you a form upon which
you will be required to give full particulars of the grounds of your objection).

FORM No. 7B

PARTICULARS OF OBJECTION TO PETITION FOR FACULTY

To the Registrar of the Diocese of _____ in the
 In the matter of a Petition relating to the church of _____
 Parish of _____
 seeking a faculty for _____

State generally
 works or
 purposes.

Delete
 whichever is
 inapplicable.

I have previously given notice of objection. My objection relates to the whole [part] of the proposed works or purposes. [The part(s) of the proposed works or purposes to which I object are:

(A)

(B)

.]

The grounds for my objection are:

(Here set out concisely the points which you rely upon in support of your objection.)

(1)

(2)

(3)

(If necessary continue with numbered paragraphs on a separate sheet.)

Dated this

day of

19

Signature of objector (or counsel or solicitor)

Directions

1. This form must be completed and returned to the Registrar at _____ if
you wish to continue to be treated as an objector.

2. If you do not return the form within 21 days from the date of this direction it will be assumed
you no longer wish to object and you will have to apply to the Consistory Court for leave to continue
with your objection out of time.

3. You must deliver or send a copy of these Particulars of Objection to the Petitioners not later
than 21 days from the date of this direction.

Dated this _____ day of _____ 19

Signature of Registrar

I certify that I have sent a copy of these Particulars of Objection to the Petitioners today.

(Signature of objector or solicitor)

Dated this _____ day of _____ 19

FORM No. 9A

APPLICATION BY MEMBER OF COUNCIL FOR THE CARE OF CHURCHES OR PERSON AUTHORISED BY COUNCIL
TO GIVE EVIDENCE UNDER RULE 6(7)

Diocese of

I, _____ of
hereby apply under rule 6(7) of the Faculty Jurisdiction Rules 1967, as amended, to give evidence in
open court in the proceedings for a faculty to dispose of

I am a member of [a person duly authorised by] the Council for the Care of Churches [to give evidence
in the said proceedings]. [A copy of my authority is annexed hereto.]

Dated this

day of

19