

GENERAL SYNOD
THE FACULTY JURISDICTION RULES 2015

Explanatory memorandum

Background

1. The Rule Committee is established by section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (“the 1991 Measure”). The Committee’s functions include making provision for carrying into effect the provisions of various Measures that are concerned with the exercise of ecclesiastical jurisdiction. In particular section 26 of the 1991 Measure empowers the Committee to make rules for regulating the procedure and practice of ecclesiastical courts.
2. The Rule Committee has made the Faculty Jurisdiction Rules 2015 (GS 1995) under the powers conferred on it by section 26 of the 1991 Measure. The new Rules build on the Faculty Jurisdiction Rules 2013 (GS 1887) (“the 2013 Rules”) by–
 - implementing reforms introduced by the Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure 2015 (“the 2015 Measure”), in particular the power to prescribe matters not requiring a faculty; and
 - making new provision which sets out in an accessible way the procedure for bringing an appeal from a decision of a consistory court.

The result is that for the first time there will be a single set of rules dealing with all the procedural aspects of the faculty jurisdiction.

3. Section 27 of the 1991 Measure provides that any rules made under section 26 must be laid before the General Synod and that they are not to come into force until approved by the Synod, whether with or without amendment. The Rule Committee has laid the Rules before the General Synod accordingly.

The new Rules

4. The new Rules provide a single, comprehensive set of rules to replace the following existing sets of rules–

The Faculty Jurisdiction (Appeals) Rules 1998 (“the 1998 Rules”)

These rules have regulated the procedure in relation to appeals in faculty cases since 1998 but have become out of date in various respects.

The Faculty Jurisdiction Rules 2013

These rules were informed by a number of recommendations that had been made in the report of the Faculty Simplification Group dated 3 September 2013 and subsequently endorsed by the Archbishops’ Council.

5. The 2013 Rules represented a new approach which was explained in [GS 1887X](#). Significant changes included the following—
 - Making the Rules subject to an overriding objective that requires cases to be dealt with justly and expeditiously, requiring the court actively to manage the cases that come before it in a way that is intended to expedite the resolution of disputes and to avoid unnecessary delay.
 - Dividing the Rules into Parts, each of which deals with a particular aspect of court procedure. This was intended to make it easier to understand the procedures.

- Making provision for the use of technology and in particular to allow for the use of electronic communication in proceedings.
 - Avoiding over-long sentences when drafting the Rules. Instead rules were broken up into more easily digestible paragraphs and sub-paragraphs. The language in which the Rules were expressed was also intended to be easier to follow than the existing rules.
 - The faculty petition form was substantially shortened and made easier to follow. Other forms were simplified.
6. The Table of Origins contained in the Annex shows where provisions contained in Parts 1 – 20 of, and the Schedules to, the new Rules were originally to be found in the 2013 Rules. Origins are not given for the provisions of Parts 21 – 27 on the basis that those parts, which make provision for appeals, do not seek to replicate the 1998 Rules but take a new approach.
 7. The provisions of the new Rules which originate in the 2013 Rules are not dealt with in this memorandum except to the extent that they have changed in the new Rules. For full details of those provisions reference should be made to GS 1887X. New provisions are given a full explanation.

Part 2 – Application and interpretation of the Rules

8. Rule 2.1 (Application of the Rules) explains the application of the various Parts of the Rules and their Schedules. Parts 1, 2 and 4 to 20 and Schedules 2 and 3 apply to proceedings in consistory courts relating to the faculty jurisdiction and injunctions and restoration orders. Parts 1, 2, 11, 12, 13, 17, 18, 19, 20 and 21 to 27 and Schedule 3 apply to appeals. Part 3 and Schedule 1 make provision for certain matters to be undertaken without a faculty.
9. Rule 2.2 (Interpretation) contains some new definitions relating to appeals and by way of clarification of existing terms (e.g. “intending applicant”, “party opponent”). The Historic Buildings and Monuments Commission for England is now referred to as “Historic England” rather than “English Heritage”, reflecting its own change of practice in 2015. And interpretative provision is made to deal with old listed building grades A, B and C (which have largely been replaced with grade I, II* and II).

Part 3 and Schedule 1 – Matters not requiring a faculty

10. Part 3 and Schedule 1 are entirely new and implement provisions of the 2015 Measure which enable the Rule Committee to make rules prescribing matters which may be undertaken without a faculty.
11. Part 3 provides the framework.
12. Rule 3.1 (Scope and interpretation) sets out the scope of Part 3 and includes interpretative provision. “Authorised person” is defined for the purposes of Part 3. In most cases, it will mean the minister and churchwardens or a person acting on their behalf (for example a contractor). Provision is made for special cases. Only an authorised person may undertake matters without a faculty under Part 3 and Schedule 1.
13. Rule 3.2 (Undertaking matters in List A without a faculty) introduces Table 1 in Schedule 1 (List A matters). List A matters may be undertaken by an authorised person without a faculty and without the need for consultation, subject to any conditions specified in the Table.
14. Rule 3.3 (Undertaking matters in List B without a faculty) introduces Table 2 in Schedule 1 (List B matters). List B matters may be undertaken by an authorised person without a faculty if the archdeacon has been consulted on the proposal and has given notice in writing that it may be undertaken without a faculty. Undertaking List B matters is subject to any conditions specified in Table 2 and to any additional conditions imposed by the archdeacon. The archdeacon is required to

consult the diocesan advisory committee, or such of its members or officers as the archdeacon thinks fit (for example, the secretary or the bells adviser), before deciding whether to give notice that a matter may be undertaken without a faculty. Provision is made for the archdeacon's notice to specify the proposals which may be undertaken and for the filing of the notice.

15. Rule 3.4 (Additional matters which may be undertaken without a faculty) makes provision in connection with orders made by the chancellor under section 18C(1) of the 1991 Measure. Such orders – known as additional matters orders – provide that in addition to the matters prescribed in List A or List B, any matter specified in the order may be undertaken without a faculty, subject to any conditions specified in the order. Provision is made for registering additional matters orders in the diocesan registry and for their publication.
16. Rule 3.5 (Excluded matters – general) makes general provision excluding certain types of proposals from the range of matters that can be undertaken without a faculty. The excluded matters include, among other things, any works which involve alteration to or the extension of a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest.
17. Rule 3.6 (Excluded matters orders) makes provision in connection with orders made by the chancellor under section 18C(3) of the 1991 Measure. Such orders – known as excluded matters orders – provide that a matter specified in the order may not be undertaken without a faculty even though it is prescribed in List A or List B. Provision is made for registering excluded matters orders in the diocesan registry and for their publication.
18. Rule 3.7 (Supplementary) makes supplementary provision. It explains that the inclusion of a matter in List A or List B does not remove that matter from the jurisdiction of the court and that such a matter may be dealt with in faculty proceedings. For example, a complex project might involve a long schedule of matters, some of which might fall within List A or List B while others might fall within neither and could not be undertaken without a faculty. Where that was the case, it would normally be sensible for all of the matters comprising the project to be dealt with together in the faculty petition. Rule 3.7 also contains provision which makes it clear that the authority to undertake List A or List B matters, or matters covered by an additional matters order, without a faculty cannot be used to circumvent restrictions imposed by way of conditions attached to faculties or by way of injunctions or restoration orders.

Part 4 and Schedule 2 – Seeking advice prior to the commencement of proceedings

19. Rule 4.2(1)(f) is a new provision. It requires any advice or other material obtained by the intending applicants relating to the environmental implications of proposals to be submitted to the DAC when seeking its advice.
20. A small number of amendments have been made to Schedule 2 (formerly Schedule 1 in the 2013 Rules) which provides for consultation with Historic England, national amenity societies and the local planning authority.
21. Paragraph 1 of the Schedule as it appeared in the 2013 Rules (Works within the scope of this Schedule) has been omitted on the basis that it merely repeated what is set out in rule 4.4 of the new Rules.
22. Paragraphs 2(2), 3(1)(a) and 4(a) now refer to demolition of a listed building as well as to its alteration or extension. This reflects the fact that there are no longer special statutory provisions as to consultation in cases of demolition in section 17 of the 1991 Measure. Consultation in demolition cases now follows the normal route for consultation.

23. Paragraph 4 has been amended so as to require consultation with the local planning authority in respect of internal as well as external works to a listed building where the works would be likely to affect its character as a building of special architectural or historic interest. This represents a return to the position under the 2000 Rules. The change has been made to meet the requirements set out in the Code of Practice for the operation of the ecclesiastical exemption issued by the Department of Culture, Media and Sport.

Part 5 – Faculty proceedings – parties and commencement

24. Part 5 no longer makes special provision for the form of petition to be used for works to trees. A range of tree works can be undertaken without a faculty under Part 3 and Schedule 1. In those cases where a faculty is still required, the general form of petition is to be used.
25. Rule 5.4(4) is a new provision. It requires details of any proposal to dispose of an article to be given in the petition.
26. Rule 5.5(3)(e) is also new. It requires any advice or other material obtained by the intending applicants relating to the environmental implications of proposals to be submitted with the petition.

Part 6 – Public Notice

27. Rule 6.6 (Exhumation, reservation of grave space and other special cases) has been re-ordered to make it easier to follow.

Part 7 – Chancellor’s jurisdiction

28. Rule 7.2(2) no longer requires the DAC to confirm its advice to the chancellor where it has issued a notification of advice within the previous 24 months. This change has been made under the authority of the new section 15(4) of the 1991 Measure (as inserted by section 3 of the 2015 Measure). It should result in the removal of an element of delay from the system.

Part 8 – Archdeacon’s jurisdiction

29. Part 8 is considerably shorter than its predecessor (Part 7 of the 2013 Rules). Provision is no longer made for the archdeacon to determine faculty petitions. Matters that were formerly within the archdeacon’s delegated faculty jurisdiction are now largely covered by List B and can be dealt with by the archdeacon with considerably less formality.
30. Various changes have been made to rule 8.2 which provides for the archdeacon to grant a licence for temporary minor reordering. Paragraph (1) has been amended to make it clear that the temporary minor re-ordering of a church includes the re-ordering of its fixtures and fittings. The Rule Committee considered this clarification to be desirable in the light of a recent judgment in the Commissary Court of Canterbury where it was held that an archdeacon’s licence for temporary minor re-ordering could not extend to fixtures (in that case fixed pews). But changes that would result in damage or permanent alteration to fixtures remain excluded from the scope of archdeacon’s licences. That is achieved by paragraph (4)(c)(iii) which requires that if a scheme of temporary minor re-ordering involves moving any item, the archdeacon must not give a licence unless satisfied that the item can easily be reinstated.
31. Paragraph (3) contains a new requirement for the archdeacon to seek the advice of the DAC or of such of its members or officers as the archdeacon thinks fit before giving a licence for temporary minor re-ordering. This puts the giving of licences for temporary minor reordering on the same footing as List B matters so far as the requirement for advice is concerned.

32. The predecessor provision to paragraph (4)(a) prevented an archdeacon's licence for temporary minor re-ordering from being granted if the scheme involved "any interference with the fabric of the church". The Rule Committee were concerned that this provision could be understood too restrictively so as to rule out such minor operations as the removal of screws securing an item in place. The new provision, by referring to "material interference with or alteration to the fabric" is intended to make it clearer that very minor operations are not excluded from the scope of archdeacons' licences.

Part 9 – Special notice of petition, consultation etc.

33. Words have been added at the end of rule 9.5(2) applying paragraphs (2) to (5) of rule 10.4. The effect is that where a body which has been given special notice of a petition sends particulars of objection and becomes a party opponent, the same procedural provisions apply as where an individual or other interested person becomes a party opponent.
34. Rule 9.9 (Works affecting character of listed building etc: publication of notice on diocesan website) has been redrafted so that the reader no longer needs to cross-refer to Schedule 2 in order to follow its provisions. More detailed provision is now made in paragraph (2) as to ensure that website notices meet the requirements of the DCMS Code of Practice relating to the ecclesiastical exemption. The heading to rule 9.9 has also been changed to draw attention to the narrow focus of this rule.
35. Part 9 no longer makes provision equivalent to rule 8.10 of the 2013 Rules, which was concerned with notices relating to demolition. That is because section 17 of the 1991 Measure (as substituted by section 13 of the Church of England (Miscellaneous Provisions) Measure 2014) no longer makes special provision for the giving of notice relating to demolition. The public and those bodies who have an interest in a particular case will receive notice through the ordinary procedures provided for in the rules.
36. Rule 9.10 (Interim faculties) is a new provision. It makes it clear that the special notice and consultation requirements of Part 9 do not prevent the grant of interim faculties.

Part 10 – Objections to faculty petition

37. Rule 10.1 (Interested persons) has been redrafted to give less prominence to the rare cases where a building is subject to the faculty jurisdiction by virtue of being included on the list maintained by the Church Buildings Council under section 1(1) of the Care of Places of Worship Measure 1999. This makes the provision easier to follow in ordinary cases.
38. Rule 10.2(3)(a) and (4)(b) – which are concerned with letters of objection – have been redrafted to make their meaning clearer. Paragraph (5) is a new provision defining the term "objector" which is then used in the subsequent provisions.
39. Rules 10.4 (Further proceedings where objector becomes party opponent) and 10.5 (Further proceedings where objector does not become party opponent) have been re-drafted so that the provisions flow more logically.

Part 11 - Directions

40. In rule 11.2(2)(f), which is concerned with giving directions as to representation at hearings, "objectors" has been replaced with "parties opponent" because objectors who elect not to become parties are not entitled to take part in proceedings.

41. The form of statement of truth for expert reports in rule 11.5(4)(a) has been amended to substitute “complete expert opinions” for “complete professional opinions”. This is to take account of the fact that an expert will not necessarily be a professional expert.
42. Rule 11.6 (Inordinate delay etc. – intervention by provincial court) is a new rule. It provides for the provincial court to intervene in proceedings in a consistory court by giving directions for the further conduct of the proceedings if it considers that there has been inordinate delay in their conduct or it is otherwise in the interests of justice. This rule is made further to the new section 7(4) of the Ecclesiastical Jurisdiction Measure 1963 (as inserted by section 8 of the 2015 Measure).

Part 12 – Conduct of hearings

43. Rule 12.2(1) – which requires witnesses to give their evidence orally under oath or solemn affirmation – has been redrafted to avoid any implication that only oral evidence (and not documentary evidence) may be admitted by the court when a hearing is held.

Part 13 – Evidence of non-parties

44. Part 13 no longer makes provision equivalent to rule 12.2 in the 2013 Rules (Demolition – evidence of Church Buildings Council and other persons). That is because there is no longer any special statutory provision in section 17 of the 1991 Measure for the Church Buildings Council or others to give evidence in demolition cases.

Part 14 – Disposal of proceedings by written representations

45. Rule 14.1(2) now contains only two conditions that have to be met for the chancellor to make an order that proceedings be determined on consideration of written representations instead of at a hearing. There is no longer a condition relating to the hearing of evidence in open court in demolition cases as the statutory provision behind the former condition (contained in rule 13.1(2)(c) of the 2013 Rules) has been swept away.

Part 15 – Interim faculties

46. Rule 15.3(3) now enables the chancellor to dispense with the usual undertaking an applicant must make to submit a petition for a faculty within a specified period of time where an interim faculty is applied for before faculty proceedings have been started.

Part 16 – Injunctions and restoration orders

47. Some drafting changes have been made in rule 16.3 (Service of application) to make its provisions easier to follow.
48. Rule 16.6, headed “Interim orders” rather than “Interim injunctions”, now covers restoration orders made on an interim basis as well as injunctions. Paragraph (4) is new and makes it clear that the court can grant interim orders having heard only the applicants in the first instance.
49. Rule 16.7, headed “Injunction or restoration order issued of court’s own initiative”, combines two separate rules in the 2013 Rules. The new rule makes it clear that interim as well as final orders can be made of the court’s own initiative.

Part 17 – Delivery of documents

50. Rule 17.1 (Methods of service etc.) replicates rule 16.1 of the 2013 Rules with minor amendments.
51. Provision for the date on which a document is deemed to have been submitted, filed or served is now made in new rule 17.5 (Deemed time of submission, filing and service). The date on which a

document is deemed to have been filed is now of considerable importance given the time limits that apply in appeal proceedings.

Part 18 – The court’s case management powers

52. Rule 18.3(7) – which is concerned with special cases where the Rules provide for the court to make orders of its own initiative – replaces rule 17.3(7) in the 2013 Rules with more specific provision.

Part 19 - Costs

53. Express provision relating to security for costs is now made in rule 19.5. Although the rule is new, statutory provision relating to security for costs has existed since the coming into force of section 60 of the Ecclesiastical Jurisdiction Measure 1963.

Part 20 – Miscellaneous and General

54. The heading to rule 20.3 (Amendment and setting aside in other circumstances) has been changed so that it better reflects the content of the rule.

Part 21 - Appeals

55. Rule 21.1 (Application of Parts 21 to 27 to appeals) introduces Parts 21 to 27 which are concerned with appeals.
56. Rule 21.2 (Interpretation of Parts 21 to 27) defines terms that are specific to Parts 21 to 27.

Part 22 – Destination of appeals and permission to appeal

57. Rule 22.1 (Appeals from consistory courts) explains to which appeal court an appeal lies. The appeal lies to the provincial court (i.e. the Court of Arches or the Chancery Court of York) unless the appeal to any extent relates to matter involving doctrine, ritual or ceremonial. If the appeal does to any extent relate to such matter the appeal lies instead to the Court of Ecclesiastical Causes Reserved. (Rules 23.1 and 23.2 make provision for determining whether an appeal relates to any extent to matter involving doctrine, ritual or ceremonial.)
58. Rule 22.1 also explains whether permission to appeal is needed. If the appeal lies to the provincial court, permission is needed. Permission is not needed to bring an appeal in the Court of Ecclesiastical Causes Reserved.
59. Rule 22.2 (Test for permission to appeal to provincial courts) sets out the test for a grant of permission to appeal where such permission is needed. Permission to appeal may be granted only where the judge deciding the application considers that the appeal would have a real prospect of success or that there is some other compelling reason why the appeal should be heard.
60. Rule 22.3 (Appeals from provincial courts) explains that a further appeal lies from the provincial court to the Judicial Committee of the Privy Council, that an appellant needs permission from the Judicial Committee to bring such an appeal and that the procedure is governed by the Judicial Committee’s own rules. An appellant who applies to the Judicial Committee for permission to appeal must also file a copy of the application with the registrar of the provincial court from which the appeal is brought.

Part 23 – Appeals from consistory court – initial application to chancellor

61. Rule 23.1 (Appeal from consistory court – initial application to chancellor) requires a party who wishes to appeal from a consistory court to apply to the chancellor for a certificate stating whether or not the proposed appeal relates to any extent to matter involving doctrine, ritual or ceremonial. It

also requires that party, at the same time, to apply to the chancellor for permission to appeal in the event that permission is needed. Both applications are made using a single form (Form 22 in Schedule 3) which must be accompanied by the proposed grounds of appeal and filed with the diocesan registry within 21 days of the date of the judgment against which the appeal is brought. Provision is also made for the service of these documents on the other parties to the proceedings.

62. Rule 23.2 (Determination of initial application by chancellor) provides for the chancellor to determine the application for a certificate and for permission to appeal without a hearing unless the chancellor directs otherwise in a particular case. The chancellor's determination of the application must be in the prescribed form (Form 23). It must contain a certificate stating whether or not the proposed appeal relates to any extent to matter involving doctrine ritual or ceremonial and the chancellor's reasons. It must also state either that permission to appeal is granted or is refused, with reasons; or that permission to appeal is not needed (because the appeal lies to the Court of Ecclesiastical Causes Reserved).
63. Rule 23.3 (Permission to appeal – renewed application to Dean) provides for a party who has applied to and been refused permission to appeal by the chancellor to make a renewed application for permission to appeal to the Dean of the Arches and Auditor. A renewed application must be made within 14 days of the date when the party receives the chancellor's determination refusing permission.
64. Rule 23.4 (Determination of renewed application) provides for the Dean to determine the renewed application without a hearing unless the Dean directs otherwise in a particular case. The Dean must give reasons for the determination.
65. Rule 23.5 (Terms of permission to appeal) provides for permission to appeal to be granted on terms limiting the issues that are to be considered on the appeal and for making the grant of permission subject to conditions (including conditions relating to costs). If the chancellor grants permission to appeal on limited terms or subject to conditions, the appellant can apply to the Dean to vary or revoke any such provisions in the Chancellor's order at the point when the appellant gives notice of appeal in the provincial court.

Part 24 – Appeals in the provincial courts

66. Rule 24.1 (Permission granted by chancellor: filing and service of appeal documents) deals with the situation where permission to appeal has been granted by the chancellor. Within 14 days of receiving the chancellor's determination the appellant must file various documents with the registrar of the provincial court, including notice of appeal, the judgment appealed against and the grounds of appeal. The appellant must also serve those documents on the other parties. The registrar of the provincial court is required to send a copy of the notice of appeal to the diocesan registrar, to any person or body (e.g. a national amenity society) who was given special notice of the petition or who gave evidence in the consistory court, and to the Church Buildings Council.
67. Rule 24.2 (Permission granted by the Dean: service of appeal documents) deals with the situation where permission to appeal was granted by the Dean on a renewed application for permission to appeal. In that situation, no notice of appeal is needed (because the provincial court is already seized of the matter) but the appellant is required to serve the Dean's determination granting permission to appeal on the other parties and on the diocesan registrar. The registrar of the provincial court is required to send a copy of the notice of appeal to any person or body (e.g. a national amenity society) who was given special notice of the petition or who gave evidence in the consistory court, and to the Church Buildings Council.
68. Rule 24.3 (Grounds of appeal) provides that the proposed grounds of appeal that were filed when the initial application was made to the chancellor constitute the grounds of appeal to the provincial

court unless it orders otherwise. This is subject to any order which limits the issues to be considered on the appeal or which imposed conditions on the grant of permission to appeal. It is also subject to the possibility of permission being given by the court to amend grounds of appeal.

69. Rule 24.4 (Respondent's notice) provides for the respondent to an appeal (i.e. any party other than the appellant who is affected by the appeal) to file a respondent's notice. A respondent is required to file a respondent's notice if the respondent:
- wishes to ask for permission to appeal (i.e. to bring a cross-appeal against a different aspect of the consistory court's decision from that which the appellant is appealing) or
 - wishes to ask the provincial court to uphold the decision of the consistory court for reasons different from or additional to those given by the consistory court in the chancellor's judgment.

Otherwise, the filing of a respondent's notice is optional. Any respondent's notice has to be filed within 14 days of the date on which the respondent receives a copy of the notice of appeal or the Dean's determination granting leave to appeal. The respondent must serve any respondent's notice on the other parties within 7 days of filing it with the registrar.

70. Rule 24.5 (Transfer of appeals) provides for the transfer of an appeal from the provincial court to the Court of Ecclesiastical Causes Reserved in the event that the provincial court considers that the appeal to any extent relates to matter involving doctrine, ritual or ceremonial (and that the provincial court therefore does not have jurisdiction to determine the appeal). This situation could arise if the provincial court disagreed with a chancellor's certificate stating that an appeal did not to any extent relate to matter involving doctrine, ritual or ceremonial; or if permission were given to amend grounds of appeal such that the appeal then did relate to such matter.
71. Rule 24.6 (Determination of appeals) requires appeals in the provincial courts to be determined after a hearing unless the Dean orders that a particular appeal is to be determined on consideration of written representations instead. The Dean may make an order for determination on written representations only if the Dean considers that course to be expedient in the particular case and all the parties have agreed in writing.

Part 25 – Appeals in the Court of Ecclesiastical Causes Reserved

72. Rule 25.1 (Notice of appeal) provides for bringing an appeal in the Court of Ecclesiastical Causes Reserved (CECR) where the chancellor's certificate states that the appeal to any extent relates to matter involving doctrine, ritual or ceremonial. Where that is the case, the appeal is brought by the appellant filing a notice of appeal with the registrar of the CECR within 14 days of receiving the chancellor's determination containing the certificate. Notice of appeal is required to be in a prescribed form (Form 26). Other relevant documents are required to be filed with the notice of appeal.
73. Rule 25.2 (Service of appeal documents) requires the appellant to serve the notice of appeal and other relevant documents on the other parties and on the diocesan registrar within 7 days of filing the notice of appeal. The registrar of the CECR is required to send a copy of the notice of appeal to any person or body (e.g. a national amenity society) who was given special notice of the petition or who gave evidence in the consistory court, and to the Church Buildings Council.
74. Rule 25.3 (Grounds of appeal) provides that the proposed grounds of appeal that were filed when the initial application was made to the chancellor constitute the grounds of appeal to the CECR unless it orders otherwise. This is subject to the possibility of permission being given by the CECR to amend grounds of appeal.

75. Rule 25.4 (Respondent's notice) provides for the respondent to an appeal (i.e. any party other than the appellant who is affected by the appeal) to file a respondent's notice. A respondent is required to file a respondent's notice if the respondent:
- wishes to appeal (i.e. to bring a cross-appeal against a different aspect of the consistory court's decision from that which the appellant is appealing against) or
 - wishes to ask the CECR to uphold the decision of the consistory court for reasons different from or additional to those given by the consistory court in the chancellor's judgment.

Otherwise, the filing of a respondent's notice is optional. Any respondent's notice has to be filed within 14 days of the date on which the respondent receives a copy of the notice of appeal. The respondent must serve any respondent's notice on the other parties within 7 days of filing it with the registrar of the CECR.

76. Rule 25.5 (Transfer of appeals) provides for the situation where the CECR has dealt with all the aspects of an appeal that relate to matter involving doctrine, ritual or ceremonial but the appeal also relates to other matter. In that situation, the CECR can either decide to deal with the other matter itself; or alternatively, it can transfer that other matter for determination by the provincial court.
77. Rule 25.5 also provides for the transfer of an appeal from the CECR to the provincial court in the event that the CECR considers that no matter of doctrine, ritual or ceremonial is involved (and that it therefore does not have jurisdiction to determine the appeal). This situation could arise if the CECR disagreed with a chancellor's certificate stating that an appeal to any extent related to matter involving doctrine, ritual or ceremonial; or if permission were given to amend, or withdraw, grounds of appeal such that the appeal no longer related to such matter. In such a situation, the CECR is required to transfer the whole appeal to the provincial court.
78. Rule 25.6 (Determination of appeals) requires appeals in the CECR to be determined following a hearing unless the CECR orders that a particular appeal is to be determined on consideration of written representations instead. The CECR may make an order for determination on written representations only if it considers that course to be expedient in the particular case and all the parties have agreed in writing.
79. Rule 25.7 (Registrars) makes the registrar of the province of Canterbury and the registrar of the province of York joint registrars of the CECR. Which of them is to act as registrar for the purposes of a particular appeal will normally depend on which province contains the diocese in which the proceedings originated.

Part 26 – Commission of Review

80. Part 26 makes procedural provision for the situation where a party to an appeal in the CECR petitions Her Majesty for a review of a finding of the CECR under section 11 of the Ecclesiastical Jurisdiction Measure 1963. Provision is made for filing the petition and other relevant documents with the Clerk of the Crown in Chancery (an office held by the Permanent Secretary at the Ministry of Justice) as required by section 11. The rules also provide for the appointment, by the Clerk of the Crown, of a registrar of the Commission of Review, for the service of the petition to Her Majesty on the other parties to the proceedings and for the filing of respondents' notices.

Part 27 – General provisions relating to appeals

81. Rule 27.1 (Stay) provides for a stay of the decision of a consistory court to arise automatically where certain steps are taken in relation to appealing that decision. The effect of a stay is that the decision of the consistory court is suspended and cannot be implemented for so long as the stay continues to have effect. The purpose of the automatic stay is to prevent a decision of the

consistory court to grant a faculty being implemented by the petitioners, or the time for complying with a restoration order running out, before an appeal against the decision of the consistory court has been determined by the appeal court. The automatic stay does not apply to an order for an injunction. That is because an injunction issued by a consistory court under section 13(4) of the 1991 Measure is an order restraining a person from committing or continuing to commit an act which is unlawful under ecclesiastical law; the purpose of an injunction would be frustrated if the person against who it was made could suspend its effect simply by seeking to bring an appeal.

82. An automatic stay arises where an appellant takes any of the steps set out in rule 27.1(2). These are (a) the making of an application to the chancellor for a certificate and for permission to appeal (if needed), (b) the making of a renewed application to the Dean for permission to appeal, or (c) the filing of a petition to Her Majesty seeking a Commission of Review. An automatic stay ceases to have effect in the circumstances set out in paragraphs (3) and (4) of rule 27.1 which are either a specified time after the appeal proceedings have been disposed of, or when an appeal is wholly set aside, withdrawn or struck out.
83. An automatic stay does not arise if the appeal court or the lower court (either the consistory court or another appeal court) makes an order to that effect. Where a stay does not automatically arise under rule 27.1, or has ceased to have effect, the appeal court or lower court may make an order staying the decision of the consistory court or lower appeal court.
84. Rule 27.2 (Court files) makes provision for the forwarding of the court file of a lower court to the appeal court and for any party to inspect the court file and obtain copies. The definition of “court file” reflects the relevant case law.
85. Rule 27.3 (Amendment of appeal notice) provides that an appeal notice (i.e. grounds of appeal, notice of appeal, respondent’s notice or petition to Her Majesty for a Commission of Review) may not be amended without permission from the appeal court. If the appeal court gives permission for an appeal notice to be amended, it may give permission on terms, including terms relating to costs.
86. Rule 27.4 (Withdrawal of appeal) provides that an appeal may not be withdrawn without permission of the appeal court. If the appeal court gives permission for an appeal to be withdrawn, it may give permission on terms, including terms as to costs.
87. Rule 27.5 (Striking out grounds of appeal etc.) provides for the appeal court to strike out an appeal notice, to set aside permission to appeal, and to impose or vary conditions on which an appeal may be brought.
88. Rule 27.6 (Addition of parties) provides for the appeal court to permit a person who was not a party to the proceedings in the lower court to become a party to an appeal provided that the person could have been a party in the consistory court. (As to who can be a party in the consistory court, see Part 5 and Part 10 of the Rules.)
89. Rule 27.7 (Interveners) provides for the appeal court to permit certain bodies and other persons to intervene in appeals. Bodies who may be given permission to intervene are the Church Buildings Council, Historic England and the national amenity societies. Additionally, any other body seeking to make submissions in the public interest, and any other person who has a sufficient interest, may be given permission to intervene. In all cases the appeal court has a discretion whether or not to give permission. If it gives permission, the appeal court may limit the matters on which the intervener may make submissions, give permission on terms relating to costs and give permission on any other terms (including limiting permission to the making of written submissions or limiting the length of any oral submissions).

90. Rule 27.8 (Appeal court's powers) sets out the powers an appeal court has in relation to an appeal. The appeal court has all the powers the lower court had. It also has power to affirm, set aside or vary any decision of the lower court, to refer any issue for determination by the lower court, to order a new hearing and to make an order for costs.
91. Rule 27.9 (Interim orders in provincial courts) provides for interim orders in the provincial courts to be made either by the Dean sitting alone or by the full court.
92. Rule 27.10 (Registrar's power to refer to court) makes provision for the registrar of an appeal court to consult the court before taking any step and for the court to take any step that would normally be taken by the registrar.
93. Rule 27.11 (Hearing and determination of appeals) provides for the manner in which an appeal court is to deal with and dispose of an appeal. Unless the appeal court orders otherwise, it will not receive oral evidence or other evidence which was not before the lower court. The appeal court will allow an appeal where the decision of the lower court was wrong or was unjust because of a serious procedural or other irregularity. The appeal court may draw any inference of fact which it considers justified on the evidence. At the hearing of an appeal a party may not rely on any matter not contained in the party's appeal notice unless the appeal court gives permission.

Part 28 – Citation, commencement, revocation and transitional provisions

94. Part 28 gives the Rules their name and provides for them to come into force on 1st January 2016. The two sets of Rules which they replace are revoked. But proceedings that were started before the new Rules come into force will continue to be governed by the Rules under which they were started unless the court directs otherwise.

Schedule 3 - Forms

95. Schedule 3 contains the prescribed forms that the Rules require to be used in particular cases.
96. An additional question asking whether the churchyard has been used for burials has been added to form 1A (Standard Information (parishes churches etc.)).
97. New text (to be deleted where not applicable) has been added to the second page of Form 4 (DAC Notification of Advice) to indicate whether or not rule 9.9, which requires the publication of notice of certain petitions on the diocesan website, applies.
98. In Forms 3A and 3B (Petition for Faculty) additional words have been added to the rubric that precedes the Schedule of Works or Proposals requiring petitioners to give details of any proposal to dispose of an item, and to describe any modifications that have been made to their proposals in the light of advice received.
99. Forms 4A and 4B (Public Notice) have been amended so that the directions to petitioners on the second page make it clear that the 28 day period during which the public notice must be displayed does not include the day on which the notice is put up or on which it is taken down.
100. Form 6 (Reply) is new and provides a form for petitioners to use when replying to particulars of objection. Subsequent forms are renumbered as a result of the inclusion of this form.
101. Form 7 (Faculty) has been amended to make it clear that the works or other proposals authorised by the faculty are those described in the Schedule. The Schedule has been amended to separate out the description of the works or proposals authorised by the faculty and any conditions which have been imposed.

102. Minor changes have been made to Forms 16 to 21 (which relate to injunctions and restoration orders).
103. Forms 22 to 27 concerned with appeals are new. The text of each relevant form and the notes make it clear that the court fees prescribed in the current Ecclesiastical Judges, Legal Officers and Others (Fees) Order must be paid when filing the form with the registry.

The Legal Office
Church House
Westminster

June 2015

Table of Origins

The Table shows where provisions contained in Parts 1 – 20 of, and the Schedules to, the new Rules were originally to be found in the 2013 Rules. Origins are not given for the provisions of Parts 21 – 27 on the basis that those parts, which make provision for appeals, do not seek to replicate the 1998 Rules but take a new approach.

An asterisk against a provision in the second column of the Table indicates that although the provision in the first column has its origins in the provision indicated, the form it takes in the 2015 Rules has been substantially amended or redrafted.

If a provision contained in one set of Rules has no corresponding provision in the other set of Rules “–” appears in the corresponding place in the other column of the Table

Rule or other provision of 2015 Rules	Rule or other provision of 2013 Rules
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
2.1	2.1*
2.2	2.2
2.3	2.3
3.1	–
3.2	–
3.3	–
3.4	–
3.5	–
3.6	–
3.7	–
4.1	3.1
4.2	3.2
4.3	3.3
4.4	3.4
–	3.5
4.5	3.6
4.6	3.7
5.1	4.1
5.2	4.2
5.3	4.3
–	4.4
5.4	4.5
5.5	4.6
5.6	4.7
5.7	4.8
6.1	5.1
6.2	5.2
6.3	5.3

6.4	5.4
6.5	5.5
6.6	5.6
6.7	5.7
6.8	5.8
7.1	6.1*
7.2	6.2*
7.3	6.3
7.4	6.4
–	7.1
–	7.2
–	7.3
–	7.4
–	7.5
–	7.6
–	7.7
–	7.8
–	7.9
–	7.10
–	7.11
–	7.12
8.1	7.13
8.2	7.14
8.3	7.15
9.1	8.1
9.2	8.2
9.3	8.3
9.4	8.4
9.5	8.5
9.6	8.6
9.7	8.7
9.8	8.8
9.9	8.9*
–	8.10
9.10	–
10.1	9.1*
10.2	9.2
10.3	9.3
10.4	9.4, 9.7*
10.5	9.5
10.6	9.6
11.1	10.1
11.2	10.2
11.3	10.3
11.4	10.4
11.5	10.5
11.6	–
12.1	11.1
12.2	11.2
12.3	11.3

13.1	12.1
–	12.2
13.2	12.3
13.3	12.4
13.4	12.5
13.5	12.6
13.6	12.7
13.7	12.8
14.1	13.1*
14.2	13.2
14.3	13.3
14.4	13.4
14.5	13.5
15.1	14.1
15.2	14.2
15.3	14.3
16.1	15.1
16.2	15.2
16.3	15.3
16.4	15.4
16.5	15.5
16.6	15.6*
16.7	15.7, 15.8
16.8	15.9
16.9	15.10
17.1	16.1
17.2	16.2
17.3	16.3*
17.4	16.4
17.5	–
18.1	17.1
18.2	17.2
18.3	17.3
19.1	18.1
19.2	18.2
19.3	18.3
19.4	18.4
19.5	–
20.1	19.1
20.2	19.2
20.3	19.3
20.4	19.4
20.5	19.5
20.6	19.6
Schedule 1	–
Schedule 2	Schedule 1
–	Schedule 2
Schedule 3	Schedule 3