

GENERAL SYNOD

THE FACULTY JURISDICTION RULES 2013

Explanatory memorandum

Background

1. The Rule Committee is established by section 25 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (“the 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 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 2013 (GS 1887) under the powers conferred on it by section 26 of the Measure. Its work has been informed by a number of recommendations that were made in the report of the Faculty Simplification Group dated 3 September 2013 and subsequently endorsed by the Archbishops’ Council.
3. Section 27 of the 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 three existing sets of rules—

The Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992

(these rules regulate the procedure for applying for and making injunctions and restoration orders under section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991);

The Faculty Jurisdiction Rules 2000

(these rules regulate the procedure in relation to petitions for faculties relating to parish churches etc. that are subject to the faculty jurisdiction in the ordinary way);

The Faculty Jurisdiction (Care of Places or Worship) Rules 2000

(these rules regulate the procedure in relation to petitions for faculties in relation to buildings that have been opted-in to the faculty jurisdiction under the Care of Places of Worship Measure 1999 – e.g. the chapel at Lambeth and certain college chapels).

5. Significant changes that have been made include the following—
 - The Rules are now subject to an overriding objective that requires cases to be dealt with justly and expeditiously. The court is required 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.
 - The Rules are divided into Parts, each of which deals with a particular aspect of court procedure. This is intended to make it easier to understand the procedures.

- Full provision is made for the use of technology and in particular to allow for the use of electronic communication in proceedings.
- Over-long sentences were avoided when drafting the Rules. Instead rules are broken up into more easily digestible paragraphs and sub-paragraphs. The language in which the Rules are expressed is also intended to be easier to follow than the existing rules.
- Various matters on which the existing Rules are silent (e.g. the grant of interim faculties and the making of costs orders) are expressly addressed in the new Rules in order to remove doubts as to how these matters relate to the rest of the faculty procedure.
- The faculty petition form has been substantially shortened and made easier to follow. Other forms have been simplified.
- Changes have been made to take account of recent case-law relating to the faculty jurisdiction.
- Gender-neutral drafting has been adopted in accordance with the policy of the General Synod.

Part 1 – Overriding objective

6. A significant new feature of the new Rules is the inclusion of an overriding objective in Part 1. This follows the approach taken in the Civil Procedure Rules. The Overriding Objective has to be taken into account by the court when it exercises any power it has under the Rules. An important aspect of the overriding objective is “active case management”. It is intended that this should help to address some of the concerns about delay in faculty proceedings that were identified in the report of the Faculty Simplification Group that was presented to, and endorsed by, the Archbishops’ Council in 2012. (Further provision as to the court’s case management powers is made in Part 17.)

Part 2 – Application and interpretation of the Rules

7. Part 2 provides for the Rules to apply to all proceedings in consistory courts relating to the faculty jurisdiction, injunctions and restoration orders. It defines technical terms that are used in the Rules and contains other interpretative provisions (including as to how periods of time specified in the Rules are to be calculated.)

Part 3 – Seeking advice prior to the commencement of proceedings

8. Part 3 broadly reflects the existing requirement to seek advice from the Diocesan Advisory Committee (“DAC”) and other bodies prior to the commencement of faculty proceedings.
9. There are, however, some changes. These include a requirement to provide the DAC with a new standard information form when seeking its advice (rule 3.2(1)(a); Form 1A/1B). The same form is employed for a number of different purposes in connection with the faculty jurisdiction (including when it comes to submitting a petition to the court). The information contained in the form – such as the listing designation of the church, and other general information – is unlikely to change frequently and, once completed, the standard information form can be kept on file and used as required, avoiding the need to fill in the same information again on a number of different forms for different purposes.
10. The description of what is required in a statement of significance has been improved to take account of what was said by the Court of Arches about the content of such statements in its recent judgment in *Re St Alkmund, Duffield* [2013] 2 WLR 854. The existing “statement of needs” has also been adapted to reflect the Court of Arches’ new guidelines on alterations to listed buildings set out in

Duffield. A “statement of needs” must set out the justification for the proposals in question and, if they are likely to harm the architectural or historic significance of a church or other building, it must set out the basis on which it is said that the proposals would result in public benefit that outweighs that harm. (Rule 3.3).

11. What is currently called a DAC “certificate” in the existing Rules is renamed a “notification of advice” (rule 3.6(1)). The term “certificate” has not proved entirely helpful as the name suggests that it constitutes formal authority in some way, when in fact it only constitutes advice. The new name should help avoid such misunderstanding in the future.

Part 4 – Faculty proceedings – parties and commencement

12. Part 4 explains who the parties to faculty proceedings are (this is a new provision – see rule 4.1) and how proceedings are started (rule 4.2). It prescribes the forms of petition that are to be used according to the circumstances of the case (rule 4.3). A faculty petition is to be accompanied by the standard information form as well as other relevant documents (rule 4.6).

Part 5 – Public Notice

13. Part 5 is concerned with giving public notice of faculty petitions and restates much of the existing provision in that regard but in a way that is intended to be easier to follow. Greater flexibility is now provided for by enabling the chancellor to dispense with the usual rules as to public notice in particular cases (for example for security reasons: a public notice might reveal the presence of a valuable article in a church) (rule 5.7(1)(b)).
14. A new provision is rule 5.8 which makes it clear that the requirement for public notice is without prejudice to the court’s power to grant an interim faculty, reflecting a recent decision in the Oxford consistory court (against which permission to appeal was refused by the Court of Arches).

Part 6 – Chancellor’s jurisdiction

15. Part 6 is new. It was thought desirable to describe the chancellor’s jurisdiction (including any limitations that are placed by statute on its exercise) before going on to describe the archdeacon’s jurisdiction in Part 7.
16. Except where the rules specifically provide otherwise, the jurisdiction of the court is exercised by the chancellor (rule 6.1). The chancellor must normally have advice from the DAC before determining a petition for a faculty or an application for an injunction or restoration order. This will normally be in the form of the notification of advice already provided by the DAC to the petitioner before the proceedings were started. In certain prescribed cases the chancellor can proceed without the DAC’s advice. (Rule 6.2) These provisions reflect the requirements of the applicable primary legislation.
17. Rule 6.3 is a new rule that requires the chancellor to record summary reasons when granting a faculty in certain categories of cases if no formal judgment is given. But in routine, uncontested cases it will remain the case that a faculty can be granted without the necessity for the chancellor to give judgment or to record summary reasons.

Part 7 – Archdeacon’s jurisdiction

18. Part 7 governs the exercise of the archdeacon’s jurisdiction to grant faculties that is provided for in section 14 of the Measure. Part 7 restates the existing provision but presents it slightly differently. Part 7 should be read with Schedule 2 which specifies the range of works and other proposals that are capable of coming within the archdeacon’s jurisdiction.

Part 8 – Special notice of petition, consultation etc.

19. Part 8 essentially restates the existing provision relating to the giving of special notice of faculty petitions to certain bodies. Provision is now made for certain notices to be published on websites, in the case of rule 8.2 as an alternative to, and in the case of rule 8.9 instead of, being published in local newspapers. The provisions relating to consultation with English Heritage, national amenity societies and the Church Buildings Council have been set out more clearly (rules 8.3, 8.6 and 8.7).

Part 9 – Objections to faculty petition

20. Part 9 sets out the procedure for objections to faculty petitions. Only an “interested person” is entitled to object to the grant of a faculty. Rule 9.1 describes who may be an interested person and reflects the provisions of the applicable primary legislation.
21. The initial method of raising an objection is unchanged: the objector sends a letter to the registry.
22. The details of the procedure following receipt of a letter of objection (rule 9.3) have been changed. The intention is to avoid unnecessarily discouraging objectors from becoming parties to proceedings, in particular by explaining that an objector who does not become a party opponent is not entitled to take part in the proceedings or to appeal and by seeking to avoid making objectors unduly concerned about the (low) risk of adverse costs orders being made against them.

Part 10 - Directions

23. Part 10 makes provision for the court to give directions for the conduct of proceedings. When deciding what (if any) directions to give, the court must seek to give effect to the overriding objective.
24. Rules 10.4 and 10.5 contain new material relating to witness statements and expert reports that reflects the equivalent provisions in the Civil Procedure Rules. Where the evidence of witnesses is to be presented at a hearing the court must normally direct the service of witness statements setting out the evidence to be given by the witnesses in advance of the hearing. (This reflects what was said by the Court of Arches in *Duffield*.) Where expert reports are relied on they must conform to certain standards.

Part 11 – Conduct of hearings

25. Part 11 makes provision for the conduct of hearings. In particular it draws attention to the requirement that evidence be given under oath (as explained by the Court of Arches in *Duffield*). Where a witness statement or expert report has been served, it is to stand as the evidence in chief of the witness or expert unless the court directs otherwise, thereby saving substantial time at hearings.

Part 12 – Evidence of non-parties

26. Part 12 largely restates existing provision relating to non-parties giving evidence. A change is that rule 12.4 allows the national amenity societies as well as English Heritage to apply to give evidence.

Part 13 – Disposal of proceedings by written representations

27. Part 13 considerably simplifies the rather elaborate and detailed provisions in the current rules relating to the disposal of proceedings on consideration of written representations. The Rules no longer prescribe the directions that must be given where the chancellor orders that proceedings are to be determined on consideration of written representations, leaving it to the chancellor to tailor directions to the circumstances of the particular case.

Part 14 – Interim faculties

28. Part 14 is entirely new. It sets out in the rules some basic provisions relating to applications for interim faculties. Interim faculties are frequently granted in emergencies and other urgent cases but the existing rules (while acknowledging their existence) make no provision in respect of them. Applications for interim faculties are often made over the telephone in the first instance and the Rules deliberately leave the manner in which applications for interim faculties may be made to the discretion of the court (rule 14.2(3)).
29. Where an interim faculty is granted it will often be granted on terms that are intended to ensure that irrevocable steps are not taken before a petition for a faculty has been submitted and determined by the court (following public notice and with the benefit of advice from the DAC and others). Rule 14.3 sets out certain terms which may or must be attached to the grant of an interim faculty.

Part 15 – Injunctions and restoration orders

30. Part 15 essentially restates (with improvements) provisions currently contained in the Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992. It sets out the procedure for applying for injunctions and restoration orders and for the court to make such orders of its own initiative.
31. Rule 15.10 is new. It expressly provides for the court to accept an undertaking to do or not to do a specified act from a person against whom an injunction or restoration order is sought. The court has a discretion whether to accept an undertaking from the person concerned. A breach of an undertaking given to the court is punishable as a contempt of court, as is a breach of an injunction or a restoration order. (Contempt of an ecclesiastical court is dealt with by the ecclesiastical judge providing the High Court with a certificate specifying the act or omission that is said to constitute the contempt. The alleged contempt is then inquired into by the High Court and, if found to have been committed, punishable by that court.)

Part 16 – Service of documents

32. Part 16 updates the existing provisions in the rules concerning the service of documents. Under Part 16 there is wide scope for the use of electronic means of submitting documents to the registry if the registry is equipped for that. This reflects an aspiration of the Simplification Group that it should be possible to complete and submit the petition form online.

Part 17 – The court’s case management powers

33. Part 17 is new. The case management powers set out in this Part reflect those in the Civil Procedure Rules. They expressly provide the court with a wide range of powers for the purpose of managing cases and furthering the overriding objective. The court may exercise its powers on an application or of its own initiative.

Part 18 - Costs

34. Part 18 is new. While the powers of consistory courts to order costs were put on a statutory footing in 1963, previous Faculty Jurisdiction Rules have been silent on the matter of costs. Part 18 provides that the court may exercise its power to make an order for costs at any stage in proceedings. If the court proposes to make an order for costs other than at a hearing it must afford the person against whom the order is proposed to be made an opportunity to make representations to the court. The court may make a provisional order as to costs which is to stand unless the person against whom it is made makes representations within a period of time specified in the order.
35. Costs are assessed by the registrar, with a right of appeal to the chancellor.

36. Special provision is made for joining persons as parties to proceedings if the court is considering making an order for costs against non-parties.

Part 19 – Miscellaneous and General

37. Part 19 contains various miscellaneous and general provisions.
38. The chancellor may inspect a church, building or article at any stage in proceedings. (This reflects what was said by the Court of Arches in *In re Holy Trinity, Eccleshall* [2011] Fam .)
39. Non-compliance with the Rules does not automatically make proceedings void but the chancellor may direct that it does; and where there has been a failure to comply with the Rules, the chancellor has a discretion to set aside or vary any faculty, judgment, order or decree of the court. The chancellor also has a more general power to set proceedings aside or to amend an order of the court if it appears just and expedient to do so. This re-states the existing position under the 2000 Rules.
40. If a procedural question arises and the matter is not dealt with in the Rules, the question is to be resolved by the chancellor who is to be guided, so far as practicable, by the Civil Procedure Rules.
41. Provision is made for departing from the prescribed forms in certain circumstances and for the chancellor to approve forms to be used where none are prescribed.
42. Provision is made for the use of electronic signatures on court documents.

Part 20 – Citation, commencement, revocation and transitional provisions

43. Part 20 gives the Rules their name and provides for them to come into force on 1st January 2014. The three sets of Rules which they replace are revoked. But proceedings that are already pending when the new rules come into force will continue to be governed by the Rules under which they were started unless the chancellor directs otherwise.

Schedule 1 – Consultation with English Heritage, national amenity societies and the local planning authority

44. Schedule 1 prescribes the circumstances in which intending applicants should consult English Heritage, relevant national amenity societies and the local planning authority. Whether such consultation will be required depends on whether the church or other building in question is listed, on the nature of the works or other proposals, on whether they are likely to affect archaeology and whether they involve demolition of a building in a conservation area.
45. Schedule 1 essentially restates existing provision as to consultation but expresses it in more straightforward terms. English Heritage has been consulted and is content with this provision.

Schedule 2 – Works within archdeacon’s jurisdiction

46. Schedule 2 specifies the range of works that area capable of coming within the archdeacon’s jurisdiction to grant faculties. It should be read with Part 7.

Schedule 3 - Forms

47. Schedule 3 contains the prescribed forms that the Rules require to be used in particular cases. The forms have been simplified in a number of respects to make them easier to complete.