
STATUTORY INSTRUMENTS

1992 No. 2882

Faculty Jurisdiction Rules 1992

PART IV

MATTERS WITHIN THE CHANCELLOR'S JURISDICTION

Matters for Chancellor

11.—(1) Save as 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 33) be in Form No 5 in Appendix B.

Requirements as to Notice of Petition

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

(2) The chancellor 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.

(3) Without prejudice to the generality of rule 12(1), where it appears to the chancellor that the works for which a faculty is sought

- (a) involve alteration to or extension of a church, which is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990, to such an extent as is likely to affect its character as a building of special architectural or historic interest, or
- (b) 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, if it appears to him that any of the following bodies has not previously been notified of the works, the chancellor shall direct that English Heritage, the local planning authority and any national amenity society as he deems fit shall be specially cited.

- (a) (4) (a) In any case falling within paragraph (3) of this rule the chancellor shall direct that the general citation required by rule 5 shall be displayed in a prominent position outside the church visible to the general public for a period of 28 days;
- (b) in any case falling within paragraph (3)(a) or (3)(c) of this rule the chancellor shall direct that a notice stating the substance of the petition shall be published in a newspaper circulating in the locality within such period as the chancellor shall direct or, if no period is directed, within fourteen days of the giving of the direction.

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

(6) Where a body has been specially cited 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 citation within which to send to the registry and the petitioners a written notice of objection containing the information required by Form No 3 in Appendix B 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

(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 3 in Appendix B 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 four weeks after the petition was lodged at 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 fourteen 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 general citation or amended citation then subject to paragraph (9) below the registrar shall complete the citation and give such directions for display of citation under rule 5(5)(b) to (d) as he thinks fit or as the chancellor has directed.

(9) In the case of a petition for a faculty for exhumation, the chancellor 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 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, 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 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.

Advice of Advisory Committee

13. Save where a petition relates exclusively to exhumation or reservation of a grave space or he 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 until he has sought the advice of the advisory committee in respect of the works or purposes the subject of the petition, provided that where the advisory committee supplied a certificate in Form No 1 under rule 3(2) in respect of the same works or purposes not more than 12 months prior to the lodging of the petition the advisory committee may, if appropriate, confirm that they do not wish to alter the said certificate.

Matters of Historic or Artistic Interest

14.—(1) Where the chancellor is of the opinion that any petition for a faculty concerns or involves or might concern or involve an article or matter of historic or artistic interest he shall direct the registrar to serve on the Council for the Care of Churches notice in Form No 9 in Appendix B

together with a copy of the petition and of the accompanying documents which were lodged in the diocesan registry under rule 3(4).

(2) 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

15.—(1) Any interested person who wishes to object to a proposed faculty being granted shall at any time during the period of fourteen days citation required by rule 5(4) or such longer period as may be directed under rule 5(5)(d) or within seven days after the expiry of either of the said periods send to the registry and to the petitioners a written notice of objection containing the information required by Form No 3 in Appendix B and he shall thereupon be treated as a party opponent for all purposes including any order for costs which may be made by the chancellor pursuant to section 60 of the Ecclesiastical Jurisdiction Measure 1963.

(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 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 4 in Appendix B 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 at the address for service given by the petitioners in the general citation in Form No 3 or such other address as the registrar may direct.

Unopposed Petition

16. In a case where either no notice of objection has been given under rule 15 above or, if such notice of objection has been given, no Particulars of Objection have been lodged within the time allowed, 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 such evidence (if any) as he may require, and subject to the requirements of section 17 of the Measure, grant the faculty.

Further pleadings

17.—(1) Where Particulars of Objection have been lodged at the registry the petitioners may and if ordered to do so shall not more than twenty one 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.

(2) If any party objects to any pleading of an opposing party, or to any part of any such pleading as being irrelevant 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 each of 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.

(3) 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 chancellor, 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.

Directions

18. If any issue raised by the pleading remains outstanding after the pleadings are closed the chancellor or the registrar if authorised by the chancellor 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.

Time and Place of Hearing

19.—(1) Where the period of twenty eight days from the time given for compliance with any directions given under rule 18 above has expired or where the case is one to which section 17(4) (d) of the Measure applies, the registrar shall lay all the documents lodged at 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 and, if it has given advice the advisory committee, written notice of the time and place of the hearing.

Evidence

20.—(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 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 (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, 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.

(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 demolition

21. 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 B 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 17(4)(b) of the Measure;
- (b) if made by any other persons, be in Form No 11 in Appendix B and be lodged at the registry not more than four weeks after the date of the last publication in accordance with rule 12(7) of the notice stating the substance of the petition.

Council for the Care of the Churches

22.—(1) Where notice of a petition has been served on the Council for the Care of Churches under rule 14(1)—

- (a) a report by the Council on the matter to which the petition relates may be made and sent to the chancellor within six weeks from 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 10 in Appendix B and shall be lodged at the diocesan registry not more than six weeks after the said date.

(2) In any case not falling under rule 21 or paragraph 1 of this rule 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 B and be lodged at the diocesan registry not less than fourteen days before the hearing.

(3) The substance of any report made to the chancellor by the Council for the Care of Churches under paragraph (1) of this rule shall be disclosed to the parties to the proceedings not less than seven days before the date of the hearing.

English Heritage

23. In any case where English Heritage has been specially cited pursuant to rule 12(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 B and be lodged at the diocesan registry not less than fourteen days before the hearing.

Judge's Witness

24.—(1) The chancellor may of his own motion direct the summoning 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 he considers that the person summoned may be able to give relevant evidence and is willing to give it.

(2) Where any person has applied in accordance with rule 21, 22 or 23 or has been summoned under paragraph (1) 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 (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

25.—(1) Except in any case in which the chancellor is required to hear evidence in open court under section 17(4) of the Measure, the chancellor, 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 chancellor under paragraph (1) above the registrar shall give notice

- (a) 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;
- (b) 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;
- (c) 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 chancellor 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 chancellor 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 proceeding shall be dealt with by written representations, the chancellor 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 chancellor 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 chancellor or the registrar (if so authorised by the chancellor) may give such other directions as to him appear just and convenient for the expeditious despatch of proceedings under this rule.