
STATUTORY INSTRUMENTS

1998 No. 1713

The Faculty Jurisdiction (Appeals) Rules 1998

PART III

**PROCEDURE ON FACULTY APPEALS TO PROVINCIAL COURTS
OR THE COURT OF ECCLESIASTICAL CAUSES RESERVED**

Lodging of appeal

7.—(1) A party to any faculty proceedings before a consistory court who desires and is entitled under the Measure to appeal to an appellate court shall lodge his appeal in accordance with the following provisions of this rule not later than 21 days after whichever is applicable of the following dates—

- (a) in the case of an appeal to the Arches Court of Canterbury or the Chancery Court of York, the date on which notice is served on him that the chancellor or the Dean has granted leave to appeal; or
- (b) in the case of an appeal to the Court of Ecclesiastical Causes Reserved, the date on which a copy of the certificate by the chancellor is served on him

provided that the registrar of the appellate court may extend the period within which the notice of appeal must be lodged on an application made to him either within that period or after it has expired.

(2) The lodging of an appeal under paragraph (1) of this rule shall be effected—

- (a) in the case of an appeal to the Court of Ecclesiastical Causes Reserved by lodging with the registrar of the appellate court 6 copies of the notice of appeal and of the chancellor's judgment or a note thereof approved by the chancellor and of the certificate of the chancellor given under rule 5(7)(a);
- (b) in the case of an appeal to the Arches Court of Canterbury or the Chancery Court of York by lodging with the registrar of the appellate court 4 copies of—
 - (i) the notice of appeal;
 - (ii) the chancellor's judgment or a note thereof approved by the chancellor;
 - (iii) the certificate given by the chancellor under rule 5(7)(a);
 - (iv) the notice served on the appellant pursuant to rule 5(8) or 6(10) stating that the chancellor or the Dean has granted leave to appeal.

(3) If an appeal is lodged under paragraph (2)(a) or (b) of this rule then the appellant shall in either case lodge two copies of the notice of the appeal with the registrar of the diocese and shall serve a copy of the notice of appeal on each of the parties to the faculty proceedings in the consistory court within 14 days of the lodging of the appeal.

(4) The registrar of the appellate court shall inform the Council and any other body which gave evidence in the consistory court that an appeal has been lodged in the Court of Ecclesiastical Causes Reserved or in the Arches Court of Canterbury or in the Chancery Court of York as the case may be. On the direction of the Court of Ecclesiastical Causes Reserved or of the Dean the registrar of

the appellate court shall notify any other body which did not participate in the faculty proceedings that an appeal has been lodged as aforesaid and such notification shall be given to such body in the manner and within the period of time so directed by the appellate court in question.

(5) Notice of an appeal under paragraph (1) of this rule—

- (a) shall be in form No. 4 or 5 in the Appendix to these Rules as appropriate;
- (b) shall set out the grounds of appeal and the relief which the party appealing seeks from the appellate court; and
- (c) if the appeal relates to part only of the judgment of the consistory court, shall specify that part.

(6) Except with the leave of the appellate court, the appellant shall not be entitled at the hearing of the appeal to rely on any grounds of appeal not stated in the notice of appeal, whether as originally lodged or, if it has been amended under rule 9, as so amended.

(7) The registrar of the diocese—

- (a) shall cause one of the two copies of the notice of appeal lodged with him to be displayed for a period of two weeks on a notice board outside the church or place of worship to which the faculty proceedings related or, if they related to a churchyard, on a notice board outside the church or place of worship to which the churchyard belongs; and
- (b) shall send or deliver to the registrar of the appellate court the court file maintained by the registrar of the diocese relating to the proceedings in the consistory court.

(8) Any party to the proceedings and the Council and any other body shall be entitled on giving reasonable notice to the registrar of the appellate court to inspect the court file referred to in paragraph (7)(b) and the file maintained by the registrar of the appellate court relating to the appeal and to have copies of documents contained therein made at the expense of the party, the Council or body requesting them.

(9) The appellate court may, on the application of the appellant, grant a stay of proceedings on the judgment of the consistory court.

Security for costs

8.—(1) At any time on or after the lodging of an appeal under rule 7 (or, in the case of an appeal to the Arches Court of Canterbury or the Chancery Court of York, at any time on or after the granting of leave to appeal) and before the hearing of the appeal, the appellate court may, on the application of any other party, or of its own motion, order the appellant or party desiring to appeal to give such security as it thinks just for—

- (a) the costs of any other party;
- (b) the payment or reimbursement of court costs, fees and expenses already incurred in relation to proceedings in the consistory court and on the appeal or to be incurred on the appeal in such manner and within such period as the court may direct.

(2) A party who fails to comply with an order for security for costs under paragraph (1) of this rule shall not proceed with or take any further steps in relation to his appeal without the leave of the appellate court.

Amendment or withdrawal of appeal

9. The appellate court may at any time at or before the hearing of any such appeal, on the application of the appellant—

- (a) allow the appeal to be withdrawn; or
- (b) allow the notice of the appeal to be amended

on such terms as the appellate court thinks just, which may in the case of amendment include the adjournment or postponement of the hearing.

Service on additional parties

10.—(1) The appellate court may at any time at or before the hearing of any such appeal, on the application of any person who was not a party but might have been made a party to the proceedings in the consistory court, by order direct that a copy of the notice of appeal shall be served on him and that he shall be made a party to the appeal, and the appellate court may give such consequential directions and make such further orders as it thinks just.

(2) Any application under paragraph (1) of these rules shall be accompanied by a summary statement of the applicant's reasons for wishing to be a party to the appeal and it may be granted on such terms as the court thinks just, which may include the adjournment or postponement of the hearing.

Hearing for directions

11.—(1) Upon receipt of a notice of appeal under rule 7 the registrar of the appellate court shall fix a time and place for a hearing for directions to be held not later than 28 days after the lodging of the notice of appeal and he shall give not less than 7 days' notice in writing thereof to the parties and bodies which participated in the faculty proceedings in the consistory court and any other person who has become a party pursuant to rule 10.

(2) The appellant and any other party or body which participated in the faculty proceedings in the consistory court and any other party to the appeal shall specify in writing any directions to be sought at the hearing for directions and shall give notice thereof in writing to the registrar of the appellate court in Form No. 6 in the Appendix to these Rules not less than 2 days before the date fixed for the hearing for directions and shall send a copy thereof to every other party or body as aforesaid.

(3) At the hearing for directions the registrar shall give such directions as he considers will facilitate the hearing of the appeal and, without prejudice to the generality thereof, may give directions as to all or any of the following—

- (a) the identification by the parties of such parts of the statements given in evidence, exhibits or other documents material to the issues to be considered at the hearing of the appeal;
- (b) the preparation of paginated bundles of material identified in (a) by one or more of the parties in sufficient numbers to provide for each member of the appellate court;
- (c) the lodging and service of the outline arguments of the parties and their lists of authorities (or photocopies of them), if any;
- (d) where an application is to be made to the appellate court to hear evidence not given in the consistory court, directions as to the preparation of a proof of evidence for the witness in question together with a short and concise written explanation as to—
 - (i) why the evidence was not called in the consistory court,
 - (ii) the relevance and importance of the further evidence in relation to the decision of the consistory court and the issues raised in the grounds of appeal;
- (e) the time within which any direction is to be complied with or within which any other thing is to be done.

(4) The registrar may, if he thinks fit, adjourn the hearing for directions to a date which shall be not later than 14 days after the date fixed for the hearing for directions and at the time of the adjournment he shall give notice to the parties to the appeal and to any other person or body who participated in the faculty proceedings in the consistory court of the date, time and place for the adjourned hearing.

Further evidence

12.—(1) At any time before or at the hearing of an appeal the appellate court may, on the application by notice in Form No. 7 in the Appendix to these Rules of a party or any other body which participated in the faculty proceedings in the consistory court, or any other party to the appeal, give leave for evidence to be placed before the appellate court which was not before the consistory court.

(2) In exercising its discretion the appellate court shall consider the proof of evidence and written explanation provided pursuant to a direction of the registrar under rule 11(3)(d), or pursuant to a direction to the same effect of the appellate court, and shall hear submissions from other parties or bodies in response to the application as it deems fit.

(3) If the appellate court decides to grant leave under paragraph (1) of this rule it shall do so on such terms, including such provision as to costs and any adjournment, as seems to it to be just in all the circumstances.

Inspection

13. The appellate court may of its own motion, or upon the application of any party, inspect any property or thing the subject of the appeal or concerning which any question arises in the appeal.

Conservation interests

14. Where the Council or any other body concerned with conservation matters (whether or not it was informed of or cited in respect of the faculty proceedings in the consistory court) applies to the appellate court to be heard, or to call evidence at the hearing of the appeal, the appellate court may give leave to the Council or any such body to be heard or to call evidence at the hearing but this power shall only be exercised in exceptional circumstances and on such terms as the court deems just.

Fixing time and place of hearing

15.—(1) After the hearing for directions under rule 11 the registrar of the appellate court shall fix the time and place for the hearing of the appeal, and the court may at any time before the hearing, on an application by a party, or of its own motion, (subject to prior notice being given to all parties) alter the time or place of the hearing or both.

(2) The appellate court may at any time, on an application by a party or of its own motion, adjourn the hearing of the appeal.

(3) Except in so far as the appellate court directs otherwise or a party consents to receive a shorter period of notice, the registrar of the appellate court shall give to all the parties not less than 21 days' notice in writing of the time and place of the hearing of the appeal and not less than 7 days' notice in writing of any sitting of the appellate court to deliver judgment.

Hearing of Appeal

16.—(1) On the hearing of any appeal the appellate court may—

- (a) draw any inference of fact which might have been drawn in the proceedings in the consistory court;
- (b) give any judgment or direction which could have been given in the consistory court or remit the matter for rehearing and determination in the consistory court by the chancellor or a deputy chancellor, as the court considers appropriate;
- (c) make such order for costs, having heard argument on the subject of costs from the parties at the conclusion of the hearing of the appeal, as the court deems fit.

(2) The judgment of the court may be delivered in writing and sent to the parties by the registrar of the appellate court, or delivered orally in the presence of not less than two members of the court as is deemed appropriate by the court.

(3) The registrar of the court shall give notice in writing to the registrar of the diocese of the judgment of the court and any directions given by it at the hearing of the appeal or upon delivering judgment.