

ECCLESIASTICAL LAW SOCIETY: LONDON LECTURE

27 JANUARY 2016

THE FACULTY JURISDICTION RULES 2015: ALL CHANGE (AGAIN)?

CHARLES MYNORS PhD, FRTPI, FRICS, IHBC, Barrister

**(Chancellor, Diocese of Worcester; Member, Legal Advisory Commission, General Synod;
Author, *Changing Churches*, Bloomsbury, 2016, and
Listed Buildings and Other Heritage Assets, Sweet & Maxwell, 2016)**

The starting point: when is a faculty needed?

“It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same.” Canon F13(3)

“For the avoidance of doubt and without prejudice to the jurisdiction of consistory courts under any enactment or rule of law, it is hereby declared that the jurisdiction of the consistory court of a diocese applies to all parish churches in the diocese and the churchyards and articles appertaining thereto.” (CCEJM 1991, s 11(1))

... and why is a faculty needed?

“to protect the interests of succeeding generations of parishioners and the country at large, to settle disputes between interested parties, and to provide safeguards against illegality and ill-considered change”. (*Halsbury’s Laws*, Vol 34 (Ecclesiastical Law), para 1067)

“Plans fail for lack of counsel; but with many advisers they succeed.” (Proverbs 15 v 22).

“Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of a church as a local centre of worship and mission.” (CCEJM 1991, s 1)

... and how is a faculty obtained?

“The Rule Committee may make rules for carrying into effect the provisions of –

- (a) this Measure; ...” (CCEJM 1991, s 26(1))

Historical background

The Continuing Care of Churches and Cathedrals, the report of the Faculty Jurisdiction Commission, 1983; led to amendments to the FJR 1967, and eventually to the CCEJM 1991, the FJR 1992 and the FJR (Injunction and Restoration Orders) Rules 1992.

The FJR 1992 were themselves replaced by the FJR 2000, following the Newman report *a Review of the Ecclesiastical Exemption from Listed Buildings Control*, commissioned by the DCMS.

FJ (Appeals) Rules 1998,¹ replacing the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965. Care of Places of Worship Measure 1999 and FJ (CPW) Rules 2000 dealt with non-parochial churches.

The faculty simplification review

Set up by CBC, under chair Ann Sloman, to explore possible improvements to faculty system. Took evidence from DACs, parishes etc. Reported September 2012.²

“A large number of useful detailed points emerged from these consultations, many of which have been incorporated in this Report, but overall five main messages emerged:

1. Disproportionate bureaucracy for minor works.
2. Length of time it can take to get a Faculty.
3. Importance of full information to be provided by the parishes to DACs in order to allow advice to be given. Importance of information from DACs and Registrars in order for parishes to know where their application is at any time in the process.
4. A simpler Petition form in plain English.
5. Improvements which can be made by a move to working online (with paper option still available for those who prefer).”

Many of the recommendations could be implemented by the adoption of best practice, for instance in adopting reasonable deadlines in responding to applicants. Others needed to be brought to Synod and the first piece of legislation generated by the working group’s report, the revised Faculty Jurisdiction Rules, was passed by the General Synod in July 2013.

¹ SI 1998/1713.

² <http://www.churchcare.co.uk/churches/faculty-rules-2015/simplifying-the-faculty-process>

Faculty Jurisdiction Rules 2013

Approved by General Synod in July 2013; laid before Parliament August 2013; came into effect 1 January 2014.³ Summarised in *Faculty Jurisdiction Rules 2013, Explanatory Memorandum*, GS 1887.⁴

Completely redrafted; in “Parts”; deal with faculties, injunctions, restoration orders; also apply to churches on CBC register. Replaced FJR 2000; also FJ (Injunction) Rules 1992 and FJ (CPW) Rules 2000. A little longer; but said (by the Dean, in General Synod) to be more readable and less lawyerly (over-long sentences avoided; rules broken up into more easily digestible paragraphs and sub-paragraphs; gender-neutral drafting; forms improved).

The Faculty Jurisdiction Rules 2013: Simpler Process, Equal Protection, Mark Hill QC, in *Ecclesiastical Law Journal*, January 2014: “Business as usual in the consistory court” – but more easily navigable.

Principal changes:

- New overriding objective: echoes CPR; duty to deal with cases justly, expeditiously, fairly, cheaply; application by the court; duty of the parties to assist; case management powers; parties to be encouraged to co-operate (resolve matters in dispute between them).
- New standard information form; shorter petition form; DAC now produces “notification of advice”, not certificate; must contain reasons for not recommending proposal, and may for non-objection; notification valid for 24 months; statements of significance and statements of need, justifying any harm, revised, to reflect *Duffield, St Alkmund*.⁵
- Public notice can be dispensed with either in emergency or otherwise; heritage cases to be publicised on diocesan website, rather than in local newspaper;
- Objectors can opt for representations to be considered (and avoid liability to costs;

³ 2013 SI 1916.

⁴ <http://www.churchofengland.org/about-us/structure/general-synod/agendas-and-papers/july-2013-group-of-sessions.aspx>

⁵ [2013] Fam 158

- New requirements as to witness statements, reflecting CPR; reflects *Duffield*; evidence at hearings to be on oath; reflects *Duffield*; national amenity societies can apply to give evidence;
- Requirement for Chancellor to give summary reasons for some decisions;
- Procedure for disposal of proceedings by written representations slightly simplified;
- New provisions as to interim faculties; reflects *White Waltham*.⁶
- Rules as to injunctions and restoration orders incorporated into main rules; applications can be made by telephone, email; undertakings now allowed;
- Documents can be served online;
- New rules as to costs;
- Chancellor may inspect building at any time (reflects *Eccleshall, Holy Trinity*⁷).

But some recommendations of Faculty Simplification Report needed change in primary legislation.

Church of England (Miscellaneous Provisions) Measure 2014

Approved by General Synod, November 2013; Royal assent 14 May 2014; Came into force on 19 May 2014. FJR 2013, rules 8.10 and 12.2 then redundant.

- Subs (1) inserted new section 17 into CCEJM: faculties for **demolition** still only allowed where building (or part) to be replaced with new one (or part), and must be notified to Bishop; but removes procedural requirements to notify CBC and to advertise in London Gazette; now governed by general requirements for petitions for works. Demolition defined to exclude trivia.
- Subs (2) amended section 18: urgent demolition must be justified as being minimum necessary etc, not just for listed buildings and conservation areas.

⁶ [2010] Fam 131 at para 26.

⁷ [2011] Fam 1.

Care of Churches and Ecclesiastical Jurisdiction (Amendment) Measure 2015

Dealt with some further amendments of the Faculty Revision Group. Introduced into General Synod, November 2013; Royal assent 12 February 2015..

- Section 1: amends CCEJM, s 6(3): guidance as to **trees** in churchyard to be provided by CBC rather than by chancellor
- Section 2: amends CCEJM, s 14: Archdeacon to have jurisdiction automatically, rather than as authorised by chancellor; explicit statutory power to authorise minor reordering
- Section 3: amends CCEJM, s 15: allows chancellor not to **consult DAC** where its advice is already available; exemption from requirement to consult DAC in urgent cases to be extended to restoration orders
- Section 4: inserts CCEJM, s 18A: allows buildings to be erected on **disused churchyards** by faculty, overcoming effect of Disused Burial Grounds Act 1884, where no burials within last 50 years or no objections.
- Section 5: inserts CCEJM, s 26A: enables Rules to prescribe **standard list of minor matters not requiring faculty**; rules may require archdeacon to be consulted, who may have to consult DAC; chancellor may add items to list, or subtract them (including in relation to specific parish); repeals CCEJM, s 11(8) (Chancellor's minor matters list)
- Section 6: inserts EJM 1963, s 7: appeal courts to have power to **intervene in cases of delay**.
- Section 7: amends EJM, s 2: Chancellor to be able to continue after age 70 with approval of bishop (after consulting Dean) for 2 yrs, then annually, subject to maximum age of 75.⁸
- Section 8: amends EJM, s 1963: Dean of Arches can make interlocutory orders sitting alone.

⁸ Unfortunately no corresponding provision for registrars!

Faculty Jurisdiction Rules 2015

Made 18 May 2015; laid before Parliament 24 July 2015; came into force 1 January 2016.

Implements changes introduced by CCEJ(A)M 2015. Includes appeal rules (replaces FJ (Appeals) Rules 1998).

Details in GS 1995X.

Faculty Jurisdiction Rules 2013	Faculty Jurisdiction Rules 2015
Parts 1, 2	Parts 1, 2 (Overriding objective; application and interpretation of the Rules)
...	New Part 3 (Matters not requiring a faculty)
Parts 3 to 5	Parts 4 to 6 (Start of faculty proceedings)
Part 6	Part 7 (Chancellor's jurisdiction)
Rules 7.1 to 7.12 not replaced (Archdeacon's faculty)	...
Rules 7.13 to 7.15	Part 8 (Archdeacon's jurisdiction)
Parts 8 to 19	Parts 9 to 20 (Handling of faculty petitions)
...	Parts 21 to 27 (Appeals)
...	Part 28 (Commencement etc)
...	Schedule 1 (Matters that may be undertaken without a faculty)
Schedule 1	Schedule 2 (Consultation with Historic England etc)
Schedule 2 not replaced (Archdeacon's faculties)	...
Schedule 3	Schedule 3 (Forms)

Matters not requiring a faculty (Part 3 and Schedule 1)

List A (rule 3.2, and Table 1 in Sched 1): matters undertaken without faculty or any consultation. Examples:

- repair and maintenance of heating system;
- work to an existing lightning conductor;
- minor repairs etc of some bell parts;
- introduction of hymn boards;
- repairs to churchyard noticeboard;
- lopping or topping of tree that is dangerous, dying or dead.

List B (rule 3.3, and Table 2 in Sched 1): matters requiring consultation with archdeacon but no faculty – archdeacon is required to consult DAC (or appropriate officer of DAC) before confirming no-faculty notice. Examples:

- adaptation of heating system;
- installation of lightning conductor;
- replacement of some bell parts;
- introduction of book of remembrance;
- repairs to lychgate;
- felling of tree that is dangerous, dying or dead.

In some dioceses, List B items notified direct to DAC.

Rule 3.4: chancellor can make additional matters order exempting items from need for faculty, possibly subject to conditions

Rule 3.5: items that always need a faculty – including

- works affecting character of listed church;
- works affecting archaeological importance of church, or requiring scheduled monument consent;
- works of extension, demolition, or erection of new building;
- matters raising point of law;

- exhumation or disturbance of human remains;
- reservation of gravespace;
- sale of item of special interest, or book in parochial library; and
- introduction of aumbry or item for reservation.

Rule 3.6: chancellor can make excluded matters order, requiring a faculty to be obtained for item on List A or List B.

Faculty petitions: other significant changes

Petitioners must supply information as to environmental impact of proposals (rr 4.2, 5.5).

Petitions for demolition now fall within rules as to alteration etc.; and procedures adjusted accordingly.

LPA to be notified of internal works affecting character of listed church (Sched 2).

No special form for petitions for tree works.

DAC not required to confirm advice where issued within previous 24 months (r 7.2).

No faculties determined by archdeacons (replaced by List B procedure).

Rules as to archdeacon's licence clarified, to allow reversible works to fixtures (eg pews); and archdeacon required to seek DAC approval before issuing licence (Part 8).

"Objector" and "party opponent" clarified (Parts 10, 11).

New procedure for provincial court to intervene in case of delay (r 11.6).

Security for costs introduced (Part 19).

English Heritage becomes Historic England.

Other minor drafting improvements.

Appeals

Now included in main rules:

- Part 22: destination for appeal; test for permission; appeal to Privy Council; review of CECR decision by Commission of Review.

- Part 23: application to chancellor; renewed application to Dean; limiting issues to be considered.
- Part 24: appeals in the provincial courts.
- Part 25: appeals in the CECR.
- Part 26: Commission of Review.
- Part 27: general provisions as to appeals.

Conclusion

Still no clear statement as to what needs a faculty.

Need for clarification as to authorisation of works in churchyard.

No need for CECR.

Crying need for consolidation of Inspection of Churches Measure 1955, Ecclesiastical Jurisdiction Measure 1963 (Part 1, Sched 1), Faculty Jurisdiction Measure 1964, Dioceses, Pastoral and Mission Measure 2007 (Part VII, Sched 4), Care of Churches etc Measure 1991, Care of Places of Worship Measure 1999, and the Miscellaneous Provisions Measures and Amendment Measures amending them.

Church buildings are resource, not hindrance. But often not appreciated.

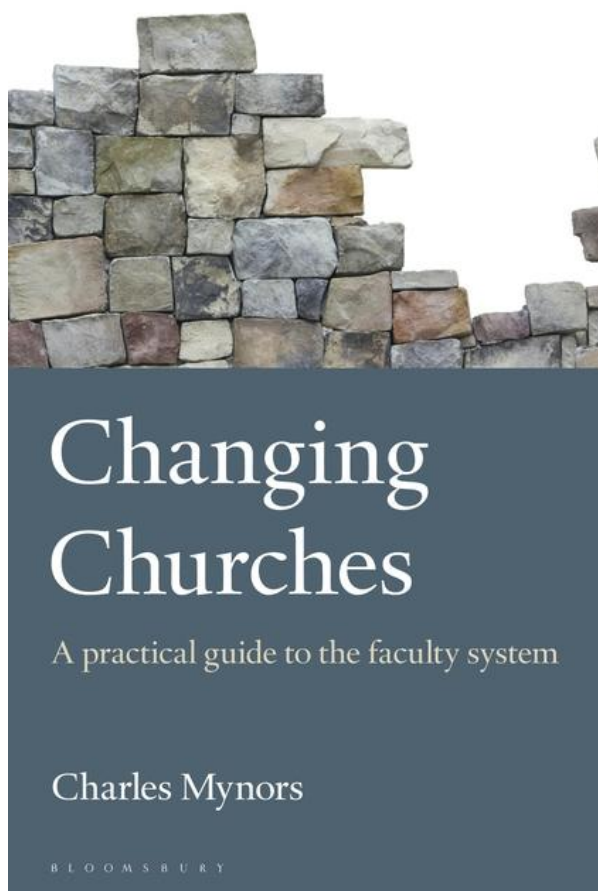
Increasing amount of litigation; more appeals. No obvious remedy in sight.

Charles Mynors,

Francis Taylor Building, Temple

27 January 2016

Further reading:



Published: 02 June-2016
Format: **Paperback**
Edition: 1st
Extent: 420 pp
ISBN: 9781441156433
Imprint: Bloomsbury Continuum
Dimensions: 234 x 153 mm
RRP: £40.00
Online price: £36.00

Save £4.00 (10%)

Your pre-order item will usually be shipped on the publishing date of the book.

*About **Changing Churches***

This book de-mystifies the whole process of carrying out works to churches.

It explains what consents are needed; how they can be applied for; and on what basis applications are decided. The author explores many of the detailed issues that may arise in practice – whether the proposal is to move a shelf in the vestry or to embark on a major refurbishment of the whole church.

Topics covered include heating, lighting, access for the less mobile, toilets, kitchens, security, storage, repairs and maintenance. The impact of change on the congregation is considered, as well as the particular problems that may arise where new facilities or new uses are introduced.

This indispensable guide highlights issues to consider when contemplating changes and helps the reader to navigate the complex legal and practical processes involved in carrying out works to churches.

Ebooks

You will receive an email with a download link for the ebook on the publication date.

Payment

You will not be charged for pre-ordered books until they are available to be shipped. Pre-ordered ebooks will not be charged for until they are available for download.

Amending or cancelling your order

For orders that have not been shipped you can usually make changes to pre-orders up to 24 hours before the publishing date.

Free UK delivery on orders £25 or over