1965 No. 251

ECCLESIASTICAL LAW

The Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965

Made (Approved by the Church Assembly)	*18th February* 1965
Laid before Parliament	*25th February* 1965
Coming into Operation	*1st March* 1965

In pursuance of section 65 of the Ecclesiastical Jurisdiction Measure 1963(a), the Rule Committee constituted under section 64 of the said Measure hereby make the following rules:—

PRELIMINARY

Citation, commencement and interpretation

1. These rules may be cited as the Ecclesiastical Jurisdiction (Faculty Appeals) Rules 1965, and shall come into force on the first day of March 1965.

2.—(1) In these rules—

" judgment " includes an order or decree and any reference to the giving of judgment shall include a reference to the making or pronouncement of an order or decree;

" the Measure " means the Ecclesiastical Jurisdiction Measure, 1963;

" the registrar of the appellate court " means, in relation to appeals from the consistory court of any diocese, the registrar of the province comprising that diocese, and accordingly the duties of that registrar shall include the duty of acting as registrar to the Court of Ecclesiastical Causes Reserved in relation to any such appeals, and the said expression includes a person appointed to act as deputy registrar;

" the registrar of the diocese " includes a person appointed to act as deputy registrar.

(2) The Interpretation Measure 1925(b) shall apply for the interpretation of these rules as it applies for the interpretation of Church Assembly Measures.

Application to determine the court to which a faculty appeal lies

3.—(1) An application made under section 10(3) of the Measure by a party desiring to appeal from the judgment of a consistory court in a cause of faculty, being an application to the chancellor for the purpose of determining whether the appeal lies to the Arches Court of Canterbury or the Chancery Court of York under section 7 of the Measure or to the Court of Ecclesiastical Causes Reserved under section 10 of the Measure, may be made immediately after the giving of judgment or may

(a) 1963 No. 1. (b) 15 & 16 Geo. 5. No. 1.

be made in writing in the form set out in the Appendix, and an application in writing shall be lodged with the registrar and copies thereof served on the other parties within fourteen days after the day on which judgment was given. Form 1.

(2) If the application is made immediately after the giving of judgment, it may be determined by the chancellor forthwith or may be adjourned and subsequently determined by him, either with or without a hearing, and if he decides that there shall be a hearing, it shall take place at such time and place as may be notified by the registrar.

(3) If the application is made by notice in writing, the chancellor may determine it either with or without a hearing, and if he decides that there shall be a hearing, it shall take place at such time and place as may be notified by the registrar.

(4) The registrar shall give not less than 3 days' notice in writing to all the parties of the time and place fixed for the hearing of any such application.

(5) After the determination of any such application, the chancellor shall certify his decision, and the registrar shall file the original certificate in the registry and serve copies thereof on the applicant and the other parties. Form 2.

Procedure on Faculty Appeals to Provincial Courts or Court of Ecclesiastical Causes Reserved

(Sections 7, 10 and 47 of Measure)

Lodging of appeal

4.—(1) Where in any cause of faculty any party desires to appeal from the judgment of the consistory court, whether the appeal lies to the Arches Court of Canterbury or the Chancery Court of York or the Court of Ecclesiastical Causes Reserved, the appeal shall be lodged, in the manner hereinafter provided, within twenty-eight days after the judgment of the consistory court was given or fourteen days after the service on the appellant of a copy of the chancellor's certificate under the last foregoing rule, whichever period last expires;

Provided that the period within which the appeal must be lodged may be extended by the registrar of the diocese on an application made to him either within the said period or after the expiration thereof.

(2) The lodging of an appeal 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 certificate of the chancellor under the last foregoing rule,

(*b*) in the case of an appeal to either of the other two courts aforesaid, by lodging with the registrar of the appellate court two copies of the notice of appeal and of the certificate of the chancellor under the last foregoing rule, and

(*c*) in any case, by lodging with the registrar of the diocese two copies of the notice of appeal, and serving one copy thereof on every party to the proceedings.

(3) The notice shall be in the appropriate form set out in the Appendix and shall state the grounds of the appeal, and if the appeal relates to part only of the judgment of the consistory court, shall specify that part. Forms 3 and 4.

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

(5) The registrar of the diocese—

(*a*) shall cause one of the two copies of the notice of appeal lodged with him to be affixed to or near the principal door of the church to which the cause of faculty relates and shall file the other copy in the registry of the diocese ;

(*b*) shall transmit the record of the proceedings, and any documents or exhibits lodged with him or in his custody relating to the proceedings, to the registrar of the appellate court.

(6) Any party to the proceedings shall be entitled, on reasonable notice, to inspect the said record, documents and exhibits, and take extracts therefrom or make copies thereof.

(7) It shall be the duty of the appellant to apply in writing to the chancellor for a signed copy of any note made by him of the proceedings and of his judgment, and to furnish that copy for the use of the appellate court ; and any other party to the proceedings may apply in writing to the chancellor for a signed copy of any such note.

(8) The registrar of the appellate court shall file one copy of the notice of appeal in the registry of the court.

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

Amendment or withdrawal of appeal

5. The appellate court may at or before the hearing of any such appeal, on an application by the appellant,—

(*a*) allow the appeal to be withdrawn,

(*b*) allow the notice of 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

6.—(1) The appellate court may 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 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 such application may be granted on such terms as the court thinks just, which may include the adjournment or postponement of the hearing.

Fixing day of hearing

7.—(1) The appellate court shall fix a time for the hearing of the appeal which shall be not less than 28 days after the lodging of the appeal unless the appellate court otherwise orders.

(2) Any party to the appeal may apply to the registrar of the appellate court for a postponement of the hearing and, if the application is granted (in accordance with rule 11), the hearing shall be at such later time as the appellate court may fix.

(3) The appellate court may at any time of its own motion postpone the hearing of the appeal.

(4) The registrar of the appellate court shall give not less than 14 days notice of the sittings of the court to all the parties.

Proceedings before appellate court

8.—(1) On any such appeal—

(*a*) the note of the chancellor of the proceedings and judgment in the consistory court and all documents and exhibits transmitted under rule 4 (5), so far as material to the appeal, shall be available for use at the hearing;

(*b*) without prejudice to the foregoing paragraph any evidence given in those proceedings by affidavit or deposition may be proved by the production of copies of the affidavit or deposition;

(*c*) in default of production of the chancellor's note the appellate court may receive any other evidence or statement of what occurred in the consistory court;

(*d*) the appellate court shall have full discretionary power to receive oral evidence (whether from witnesses who gave evidence before the consistory court or new witnesses) or further evidence by affidavit or by deposition taken before an examiner, but this power shall only be exercised in exceptional circumstances.

(2) The appellate court or, with the consent of the parties, any judge or judges thereof may inspect any property or thing concerning which any question arises on the appeal.

(3) The appellate court may draw any inferences of fact which might have been drawn in the proceedings in the consistory court.

(4) The appellate court may give any judgment or direction which ought to have been given by the consistory court or may remit the matter with the directions of the appellate court for re-hearing and determination by the consistory court.

(5) The powers under the last foregoing paragraph shall, if any party has been added by the appellate court be exercisable as if he had been a party to the proceedings in the consistory court.

(6) The registrar of the appellate court shall give notice in writing to the registrar of the diocese of any judgment or directions given by the appellate court.

Procedure on Review in Faculty Causes by Commission of Review

(Sections 11 and 48 of Measure)

Lodging of petition

9.—(1) Where in any cause of faculty involving matter of doctrine, ritual or ceremonial any party desires that a finding of the Court of Ecclesiastical Causes Reserved should be reviewed by a Commission of Review, the petition shall be lodged in the manner hereinafter provided, within 28 days after the finding to which the petition relates:

Provided that the period within which the petition must be lodged may be extended by the registrar of the said court on an application made to him either within the said period or after the expiration thereof.

(2) The lodging of a petition shall be effected by—

(*a*) lodging with the Clerk of the Crown in Chancery six copies of the petition and of the certificate of the chancellor under rule 3 of these Rules;

(*b*) lodging one copy of the petition with the registrar of the Court of Ecclesiastical Causes Reserved and one copy thereof with the registrar of the diocese, and

(*c*) serving one copy thereof on every party to the proceedings.

Form 5. (3) The petition shall be in the appropriate form set out in the Appendix and shall state the grounds of the petition, and, if the petition relates to part only of the finding of the Court of Ecclesiastical Causes Reserved, shall specify that part.

(4) Except with the leave of the Commission of Review, the petitioner shall not be entitled on the hearing of the petition to rely on any grounds not stated in the petition whether as originally lodged or, if amended under rule 5 as applied by the next following rule, as so amended.

(5) As soon as a petition under this rule has been lodged the Clerk of the Crown in Chancery shall appoint a person to be the registrar of the Commission of Review, and shall hand over the six copies of the petition to the registrar so appointed, who shall file one of them.

(6) The registrar of the Court of Ecclesiastical Causes Reserved shall transmit the record of the proeedings in that court and in the consistory court, and any documents or exhibits lodged with him or in his custody relating to the proceedings, to the registrar of the Commission of Review; and any party to the proceedings shall be entitled, on reasonable notice, to inspect the said record, documents and exhibits and take extracts therefrom or make copies thereof.

(7) It shall be the duty of the petitioner to apply in writing to the presiding judge of the Court of Ecclesiastical Causes Reserved for a signed copy of any note made by him of the proceedings and finding of the court, and to furnish that copy for the use of the Commission; and any other party to the proceedings may apply in writing to the presiding judge for a signed copy of any such note.

(8) The registrar of the Commission of Review shall notify the parties of the names of the Commission and, if the cause involves a question of doctrine, the persons selected under section 48(3) of the Measure to sit with the Commissioners as advisers.

(9) The Commission may, on an application by the petitioner, grant a stay of proceedings on the judgment or finding of either of the courts below.

Application to Commission of rules relating to appellate courts

10. Rules 5, 7 and 8 of these Rules shall apply in relation to a petition under the foregoing rule as they apply in relation to appeals

under rule 4, subject to such modifications as may be necessary and in particular to the modification that rule 8(1) shall apply to the note of the presiding judge of the Court of Ecclesiastical Causes Reserved, and to any affidavit, deposition or other evidence given before that court, as well as to the note, affidavits, depositions and evidence therein mentioned.

General Provisions

Interlocutory applications

11.—(1) This rule applies to applications made under these rules to a registrar and applications made thereunder to an appellate court or Commission of Review otherwise than at the hearing of an appeal or petition.

(2) Every such application shall be in writing and shall be lodged with the registrar to whom the application is made or, if it is made to any such court or Commission, shall be lodged with the registrar thereof. Form 6.

(3) The registrar may grant any application made to him, without a hearing, if there is lodged with the application a consent in writing signed by each of the other parties or his solicitor, or if the registrar is otherwise satisfied that none of the other parties opposes the application.

(4) In the case of any other application lodged with the registrar under this rule, the registrar shall fix a time and place for the hearing thereof, and shall give not less than 3 days' notice in writing of the time and place to all the parties.

(5) Any application granted under this rule may be granted on such terms as the person or body granting the application may think just.

(6) Any party may appeal—

(*a*) from the decision of the registrar of a diocese, to the chancellor;

(*b*) from the decision of the registrar of any appellate court or Commission of Review, to that court or Commission;

and the notice of appeal shall be lodged with the registrar within 7 days after the decision, and the registrar shall fix the time and place of the hearing of the appeal and give not less than 3 days' notice thereof in writing to both parties. Form 7.

(7) Any application or appeal under this rule to the Court of Ecclesiastical Causes or to a Commission of Review may be heard and determined by such one of the two judges of the Court of Ecclesiastical Causes Reserved other than bishops as may be agreed between them or, as the case may be, by the presiding judge of the Commission of Review.

Applications at hearing

12. If any party proposes to apply under these rules to an appellate court or Commission of Review to exercise any powers at the hearing of the appeal or petition, he shall if practicable give notice in writing to the other parties and the registrar of the court or Commission but without prejudice to the exercise of those powers without notice.

Application of certain general provisions of Ecclesiastical Jurisdiction (Discipline) Rules 1964

13.—(1) Paragraphs (2) (3) and (4) of rule 58 of the Ecclesiastical Jurisdiction (Discipline) Rules 1964 (which relate to the service of documents), and rule 59 of the said rules (which relates to the lodging of documents with the registrar) shall apply to the service and lodging of documents under these rules.

(2) Rule 62 of the said rules (which relates to the production and inspection of documents and attendance of witnesses) shall apply for the purpose of proceedings on an appeal or petition under these rules (including an appeal to the Court of Ecclesiastical Causes Reserved) as it applies for the purposes of an appeal or petition under those rules.

(3) Rules 64, 65 and 66 (which respectively relate to the calculation of time, the effect of non-compliance with rules and the use of forms) shall apply, so far as applicable, for the purposes of these rules as they apply for the purposes of those rules.

Dated the thirteenth day of January 1965.

J. R. Cumming Bruce.
Gerald Cestr.
Eric Kemp.
R. H. Mais.
E. Garth Moore.
L. H. Orford.
Henry Willink.

Approved by the Church Assembly the eighteenth day of February 1965.

John Guillum Scott,
Secretary.

APPENDIX

FORMS

No. 1

Application under s. 10(3) for certificate

Rule 3(1)

Ecclesiastical Jurisdiction Measure 1963

Consistory Court of

Cause of faculty relating to [the church of] in the parish of

Petitioner (state name)

Other parties (state names and status)

I, of

being the petitioner in [a party to] the above cause, hereby apply to the Chancellor under section 10(3) of the Ecclesiastical Jurisdiction Measure 1963 to certify whether or not the above cause involves a question of doctrine, ritual or ceremonial.

Dated this day of 19 .

Signature of the applicant or his solicitor

No. 2

Certificate of Chancellor under s. 10(3)

Rule 3(5)

(Heading as in Form No. 1)

I, of

being the Chancellor [Deputy Chancellor] of the diocese of

hereby certify that the above cause involves [does not involve] a question of doctrine, ritual or ceremonial.

Dated this day of 19 .

Signature of the chancellor [deputy chancellor].

No. 3

Notice of appeal from consistory court to Arches or Chancery Court

Rule 4(3)

(Heading as in Form No. 1)

I, of

being the petitioner in [a party to] the above cause, hereby give notice that I appeal to the Arches Court of Canterbury [Chancery Court of York] from the judgment of the Consistory Court of

given on the day of 19 , whereby it was adjudged (here state the effect of the judgment and, if only part of the judgment is appealed from, specify that part).

The grounds of the appeal are:—

(Here state the grounds of the appeal)

By certificate dated the day of 19 , the Chancellor [Deputy Chancellor] certified that the above cause did not involve a question of doctrine, ritual or ceremonial.

Dated this day of 19 .

Signature of the appellant or his solicitor.

No. 4

Notice of appeal from consistory court to Court of Ecclesiastical Causes Reserved

Rule 4(3)

(Heading as in Form No. 1)

I, of ,
being the petitioner in [a party to] the above cause, hereby give notice that I appeal to the Court of Ecclesiastical Causes Reserved from the judgment of the Consistory Court of given on the day of 19 , whereby it was adjudged (here state the effect of the judgment and, if only part of the judgment is appealed from, specify that part).

The grounds of the appeal are:—

(Here state the grounds of the appeal)

By certificate dated the day of 19 , the Chancellor [Deputy Chancellor] certified that the above cause involved a question of doctrine, ritual or ceremonial.

No. 5

Petition for review by Commission of Review of finding of Court of Ecclesiastical Causes Reserved

Rule 9(3)

Ecclesiastical Jurisdiction Measure 1963

Court of Ecclesiastical Causes Reserved

Cause of faculty relating to [the church of]
in the parish of in the diocese of

Petitioner (i.e. the original petitioner for the faculty—state name)

Other parties (state names and status).

I, of ,
being the petitioner in [a party to] the above cause, hereby petition for a review by a Commission of Review of the finding made on the day of 19 by the Court of Ecclesiastical Causes Reserved on an appeal from the judgment of the Consistory Court of in the above cause.

The Court of Ecclesiastical Causes Reserved found

(Here state the effect of the finding and, if only part of the finding is appealed from, specify that part)

The grounds of the petition are:—

(Here state the grounds of the petition)

Dated this day of 19 .

Signature of the petitioner or his solicitor.

No. 6

Interlocutory Application

Rule 11(2)

Ecclesiastical Jurisdiction Measure 1963

(State appropriate Court or Commission to which or to the registrar of which the application is made.)

Cause of faculty relating to [the church of]
in the parish of , in the diocese of

Petitioner (state name)

Other parties (state names)

I, of ,
being the petitioner in [a party to] the above cause hereby apply to the registrar [the above Court or Commission] for (here state the relief sought).

Dated this day of 19 .

Signature of applicant or his solicitor.

No. 7

Notice of appeal to Court or Commission from registrar's decision

Rule 11(6)

(Heading as in Form No. 6)

I, of ,
being the petitioner in [a party to] the above cause hereby give notice that I appeal from the decision of the registrar dated
granting [refusing] an application for (here state nature of application) to the (here state the Court or Commission to whom the appeal is made), on the following ground[s]:—

(Here state ground[s] of appeal)

Dated this day of 19 .

Signature of appellant or his solicitor.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

The rules provide a code of procedure for appeals in causes of faculty. Rule 3 deals with applications to the chancellor to determine whether an appeal from the consistory court is to go to the provincial court or the Court of Ecclesiastical Causes Reserved. Rules 4 to 8 deal with appeals to either court, and rules 9 and 10 with petitions for a review of findings of the Court of Ecclesiastical Causes Reserved by a Commission of Review. The other rules relate to interlocutory applications and other general matters.