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STATUTORY INSTRUMENTS

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**1992 No. 2884**

**ECCLESIASTICAL LAW, ENGLAND**

**Faculty Jurisdiction (Injunctions  
and Restoration Orders) Rules 1992**

*Approved by the General Synod*

<i>Made</i>	- - - -	<i>14th October 1992</i>
<i>Laid before Parliament</i>		<i>19th November 1992</i>
<i>Coming into force</i>	- -	<i>1st March 1993</i>

In pursuance of sections 13 and 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991<sup>(1)</sup> the Rule Committee constituted in accordance with section 25 of the said Measure makes the following Rules:—

**Citation and commencement**

1. These Rules may be cited as the Faculty Jurisdiction (Injunctions and Restoration Orders) Rules 1992 and shall come into force on the first day of March 1993.

**Interpretation**

2.—(1) In these Rules

“the Measure” means the Care of Churches and Ecclesiastical Jurisdiction Measure 1991;

“article” includes any article appertaining to a building which is subject to the faculty jurisdiction by virtue of an order made under section 11(4) of the Measure;

“the archdeacon” means the archdeacon of the archdeaconry in which the church or churchyard concerned is situated;

“the chancellor” and “the registrar” mean, in relation to any proceedings, the chancellor and the registrar respectively of the diocese in which the church or churchyard is situated, and include any person appointed to act as the deputy of the chancellor or registrar, as the case may be;

“church” includes any building (1) which is for the time being subject to the faculty jurisdiction by an order made by the bishop under section 6 of the Faculty Jurisdiction Measure 1964<sup>(2)</sup>, or (2) which is licensed by the bishop of a diocese after the coming into operation of section 11 of the Measure for public worship according to the rites and ceremonies of the Church of

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(1) 1991 No. 1.  
(2) 1964 No. 5.

England unless such building has been excluded from the faculty jurisdiction by order made under section 11(3) of the Measure;

“court” means the consistory court of the diocese in which the church or churchyard is situated and the chancellor or registrar thereof;

“injunction” means an order constituting an injunction under section 13(4) of the Measure;

“minister” has the same meaning in these Rules as in section 31(1) of the Measure;

“restoration order” means an order made under section 13(5) of the Measure.

(2) The Interpretation Act 1978(3) shall apply for the interpretation of these Rules as it applies for the interpretation of Measures passed by the General Synod.

### **Applicant**

3. An application for an injunction or for a restoration order may be made by
- (a) the archdeacon concerned
  - (b) any other person appearing to the registrar or the chancellor to have a sufficient interest in the matter.

### **Form of application**

4.—(1) Subject to rule 8(1) any application under section 13 of the Measure shall be made in writing and shall be in Form No. 1 in the Appendix.

(2) An application under rule 4(1) shall be accompanied by an affidavit of the applicant, or of a person acting on his behalf, giving details of the facts and matters relied upon in support of his application for an injunction or restoration order. An affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) An application made under rule 4(1) shall not be served on any person unless it contains details of a date of hearing which shall be provided by the registrar who issues the application.

### **Service**

- (a) 5. (1) (a) Subject to rule 8 an application under rule 4(1) shall be served
- (i) upon any person against whom the applicant is seeking an injunction or restoration order, and
  - (ii) where faculty proceedings have been instituted in relation to or concerning the subject matter of the application, upon each of the petitioners and any other parties to the proceedings, and
  - (iii) if it appears to the court that it is impracticable for any reason to serve the application on all or any of the persons described in paragraph (i) and (ii) of this rule, the court may make an order giving leave for such steps to be taken as the court directs to bring the application to the notice of any person to be served.
- (b) Unless the court otherwise directs, service shall be effected not less than 2 clear days before the date specified in rule 4(3).

(2) A copy of any application made under rule 4(1) (other than by the archdeacon) shall be sent by the applicant to the archdeacon and also to the minister (if he is not the applicant) at the same time as steps are taken to effect service under rule 5(1).

(3) Before he lays any application made under rule 4(1) before the chancellor the registrar shall satisfy himself that service has been effected and shall require by way of proof thereof either an acknowledgement of service signed by the person against whom an injunction or restoration order is sought, or his solicitor, or an affidavit that personal service or service in accordance with any order under rule 5(1)(a)(iii) has been effected.

### **Evidence**

6.—(1) Any person upon whom an application under rule 4(1) is served shall be entitled to answer the application by way of affidavit evidence from himself and witnesses on his behalf, or, subject to the directions of the chancellor, by oral evidence at the hearing.

(2) Any affidavit in answer to an application under rule 4(1) shall be served on the applicant within fourteen days after service of the application upon the person answering the same and a copy of the affidavit shall at the same time be sent to the registrar.

### **Hearing**

7.—(1) The evidence at the hearing of an application under rule 4(1) shall be given by affidavit, unless leave is given by the chancellor for evidence to be given orally, provided that the makers of affidavits may be required to attend the hearing for cross-examination.

- (a) (2) (a) The chancellor may issue an injunction or make a restoration order on such terms as appear to him to be just and such terms shall be set out in an order in Form No. 2 or Form No. 3 in the Appendix which shall contain a notice stating that failure to comply without reasonable excuse with any requirement of the injunction or order is a contempt of court.
- (b) Any order requiring any person to do an act, shall state the time within which the act is to be done.
- (c) The chancellor shall give such directions as to service of the order as he considers appropriate.

(3) On the hearing of an application under rule 4(1) the chancellor shall give such directions in relation to the institution of faculty proceedings as he considers appropriate.

### **Emergency application**

8.—(1) Where an applicant considers that it is necessary to apply to the chancellor under section 13(4) of the Measure for an injunction without complying with rule 5(1) the applicant may so inform the registrar and he shall immediately refer the matter to the chancellor, who may issue an injunction on such terms as may appear to him to be just by way of an order in Form No. 4 in the Appendix provided that he shall

- (a) require the applicant immediately to serve an application in Form No. 1 in the Appendix on the person or persons against whom the injunction is issued,
- (b) order that the injunction shall continue in force for a specified period of time which, unless he otherwise directs, shall be not more than fourteen days from the date of the order, and
- (c) give directions for the hearing of the application.

(2) Where as the result of information brought to his attention (whether before or after faculty proceedings have been instituted) the chancellor considers it necessary to issue an injunction against any person without any application having been made under rule 4(1), he may of his own motion issue an injunction on such terms as appear to him to be just by way of an order in Form No. 5 in the Appendix provided that he shall make an order in accordance with rule 8(1)(b) and shall give directions for the hearing of the application.

### **Restoration order without application**

9. Where no application has been made under rule 4(1) but it appears to the chancellor as the result of information brought to his attention (whether before or after faculty proceedings have been instituted) that there are grounds on which he might make a restoration order he shall not make such an order of his own motion by way of an order in Form No. 6 in the Appendix without first considering the desirability of

- (a) directing that a special citation be served on any person against whom such a restoration order might be made requiring the attendance of such person before the court at such time and place as is specified in the citation, and
- (b) giving that person an opportunity to be heard as to whether or not a restoration order should be made.

### **General provisions**

10.—(1) Service of any document may be effected in the manner provided for in rule 28 of the Faculty Jurisdiction Rules 1992(4) and the provisions of rules 29 and 33 of the Faculty Jurisdiction Rules 1992 shall apply for the purposes of these Rules.

(2) Any injunction or restoration order made under these Rules may be varied, extended or discharged by the chancellor as he thinks fit.

(3) At any stage of any proceedings pursuant to these Rules the chancellor shall give such directions as appear to him to be necessary to enable the proceedings to be expeditiously and justly determined, and he may adjourn the hearing of any application or other proceedings from time to time on such terms as he considers just.

### **Costs**

11. The Chancellor may make such orders for costs in respect of any application for an injunction or restoration order as he considers just.

*Sheila Cameron  
John Bullimore  
+Eric Cicestr  
Kenneth Gibbons  
William Hawkes  
Joanna Ingram  
Lionel Lennox  
Julian Litten  
John Owen  
Frank Robson*

Dated this fourteenth day of October 1992

Approved by the General Synod this tenth day of November 1992.

*Philip Mawer*  
Secretary General

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## APPENDIX

### FORMS

No. 1

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

In the Consistory Court of the diocese of

Diocese of .....

Parish of .....

In the Matter of ..... (Church) (Churchyard) (Article appertaining to church) (And in the Matter of petition or faculty dated the ..... day of ..... 199 relating to .....)

I, (Name of applicant) of (address) in my ..... capacity as (e.g. minister, churchwarden, parishioner [Note (1)] apply to the Court for an Order in the following terms:

[That ..... (name of person or persons) of ..... (address) whether by (himself) (themselves) (his) (their) servants or agents, or otherwise be restrained from ..... (state act which the person(s) is to be restrained from committing or continuing to commit)]

or

[That ..... (name of person or persons) of ..... (address) do take the following steps to restore the (church) (churchyard) (named article appertaining to the church), namely

- (1)
- (2)

The grounds on which I claim to be entitled to the Order are:-

(Describe shortly the unlawful act intended to be committed or already committed).

Take Notice that this application will be heard at ..... (address) on the ..... day of ..... 199 at ..... o'clock.

The names and addresses of the persons upon whom it is intended to serve this application are:-

(here state the names and addresses of the persons intended to be served)

- (1)
- (2)

A copy of this application must be sent by the applicant to the archdeacon (Note (2)) and to the minister (Note (3)) at the same time as it is served on the persons named above.

Dated this ..... day of ..... 199 .

Signed .....  
(Applicant or solicitor for the Applicant)

Note(1) See Rule 3

- (2) To be deleted where applicant is archdeacon.
- (3) To be deleted where applicant is the minister.

\*Faculty proceedings having been instituted in relation to or concerning the subject matter of the application, the application will also be served on the following persons (together with the affidavit in support)

- (1) (names and addresses of each of the petitioners)
- (2) (names and addresses of other parties to the faculty proceedings)

Instruction to person upon whom this application is served. If you intend to instruct a solicitor to act for you give him this document immediately.

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*Acknowledgement of Service*

I, (name) of (address) acknowledge Service of this originating application. I \*[intend] [do not intend] to contest the application.

Signed .....  
[If solicitor, state business address]

\*Delete where inapplicable.

Form No. 2 Order for Injunction whether or not faculty proceedings have been instituted.

Order for Injunction whether or not faculty proceedings have been instituted.

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In the Consistory Court

Diocese of .....

In the Matter of ..... (Church) (Churchyard)

Upon the application of ..... (name of applicant) and upon hearing (the applicant) (solicitor or counsel for the applicant) and ..... (name of other person or persons who contested application) (solicitor or counsel for person who contested application) and upon reading the affidavits (and hearing oral evidence)

IT IS ORDERED that ..... (name of person or persons subject of the Order) whether by (himself) (themselves) (his) (their) servants or agents, or otherwise be restrained from (set out terms of order) until the date when faculty proceedings which [have been] [are to be] commenced have been determined or until further Order in the meantime, or until the ..... day of ..... 199 upon which day this Court will consider whether this Order shall be further continued.

TAKE NOTICE THAT IF WITHOUT REASONABLE EXCUSE YOU FAIL TO COMPLY WITH THE DIRECTIONS CONTAINED IN THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND COULD BE COMMITTED TO PRISON IF PROCEEDINGS ARE BROUGHT AGAINST YOU FOR CONTEMPT OF COURT.

DATED .....

Chancellor and Official Principal

Note: Delete words in brackets which are inapplicable.

This order was made in the presence and hearing

of ..... (names of any party against whom the order is made).

The chancellor gave the following directions for service of this order:

Form 3 Restoration Order whether or not faculty proceedings have been instituted.



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In the Consistory Court

Diocese of .....

In the Matter of ..... (Church) (Churchyard)

Upon the application of ..... (name of applicant) and upon hearing (the applicant) (solicitor or counsel for the applicant) and ..... (name of other person or persons who contested application) (solicitor or counsel for person who contested application) and upon reading the affidavits (and hearing oral evidence)

IT IS ORDERED that ..... (name of person or persons subject of the Order) do within ..... (days) (weeks) from the date of this Order take the following steps to restore the (church) (churchyard), (named article appertaining to the church), namely

- (1)
- (2)
- (3)

TAKE NOTICE THAT IF WITHOUT REASONABLE EXCUSE YOU FAIL TO COMPLY WITH THE DIRECTIONS CONTAINED IN THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND COULD BE COMMITTED TO PRISON IF PROCEEDINGS ARE BROUGHT AGAINST YOU FOR CONTEMPT OF COURT.

DATED .....

Chancellor and Official Principal

Note: Delete words in brackets which are inapplicable.

This order was made in the presence and hearing

of ..... (names of any party against whom the order is made).

The chancellor gave the following directions for service of this order:

Form No. 4Order for Injunction without application in Form No. 1.

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Order for Injunction without application in Form No. 1.

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In the Consistory Court

Diocese of .....

In the Matter of ..... (Church) (Churchyard)

Upon the application of ..... (name of applicant) and upon hearing (the applicant) (solicitor or counsel for the applicant) and upon reading the affidavit (of the applicant) (and hearing oral evidence) and being satisfied that an Order in the terms hereof is required to prevent the commission of an unlawful act

IT IS ORDERED that ..... of ..... (name and address of person or persons subject of the Order) whether by (himself) (themselves) (his) (their) servants or agents, or otherwise be restrained from (set out terms of order)

until the ..... day of ..... 199 upon which day the application will be further considered and the Court will decide whether this Order shall be further continued.

AND IT IS FURTHER ORDERED THAT THE APPLICANT SHALL FORTHWITH SERVE ON THE SAID ..... of ..... (name and address of person or persons subject of the Order) an application in Form No. 1 together with a copy of the affidavit in support thereof.

TAKE NOTICE THAT IF WITHOUT REASONABLE EXCUSE YOU FAIL TO COMPLY WITH THE DIRECTIONS CONTAINED IN THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND COULD BE COMMITTED TO PRISON IF PROCEEDINGS ARE BROUGHT AGAINST YOU FOR CONTEMPT OF COURT.

DATED .....

Chancellor and Official Principal

Note: Delete words in brackets which are inapplicable.

Form No. 5 Order for Injunction made by Court on its own motion

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In the Consistory Court

Diocese of .....

In the Matter of ..... (Church) (Churchyard)

Whereas information has been brought to the attention of the Court from which it appears that an unlawful act in relation to the (church) (churchyard) will be committed or continue to be committed unless restrained by the Court, and being satisfied that an Order in the terms hereof is required to prevent the commission or continuance of such unlawful act

IT IS ORDERED that ..... of ..... (name and address of person or persons subject of the Order) whether by (himself) (themselves) (his) (their) servants or agents, or otherwise be restrained from ..... (set out terms of Order)

until further Order or until the ..... day of ..... 199 upon which day the Court will consider the matter again and decide whether this Order shall be further continued.

TAKE NOTICE that you are required to attend before the Court on the ..... day of ..... 199 when you will be given an opportunity to be heard as to why this Order should not be continued, unless in the meantime you apply to the Court for the matter to be heard on an earlier date.

TAKE NOTICE THAT IF WITHOUT REASONABLE EXCUSE YOU FAIL TO COMPLY WITH THE DIRECTIONS CONTAINED IN THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND COULD BE COMMITTED TO PRISON IF PROCEEDINGS ARE BROUGHT AGAINST YOU FOR CONTEMPT OF COURT.

DATED .....

Chancellor and Official Principal

Note: Delete words in brackets which are inapplicable.

Form No. 6Restoration Order made by Court on its own motion.

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In the Consistory Court

Diocese of .....

In the Matter of ..... (Church) (Churchyard)

Whereas information was brought to the attention of the Court from which it appeared that an unlawful act in relation to the (church) (churchyard) (an article appertaining to the church) had been committed, namely (concise description of unlawful act)

AND whereas citation was served upon (name and address of person or persons) requiring (his) (their) attendance at the Court on (date) so that (he) (they) might be heard as to whether or not a restoration order should be made and (the said (name of person) having failed to appear) OR (upon hearing (name of person appearing in person) (solicitor or counsel for ..... (name)) and upon hearing oral evidence (and reading the affidavits)

IT IS ORDERED that ..... (name of person or persons subject of the Order) do within ..... (days) (weeks) from the date of this Order take the following steps to restore the (church) (churchyard) (named article appertaining to the church), namely

- (1)
- (2)
- (3)

TAKE NOTICE THAT IF WITHOUT REASONABLE EXCUSE YOU FAIL TO COMPLY WITH THE DIRECTIONS CONTAINED IN THIS ORDER YOU WILL BE GUILTY OF CONTEMPT OF COURT AND COULD BE COMMITTED TO PRISON IF PROCEEDINGS ARE BROUGHT AGAINST YOU FOR CONTEMPT OF COURT.

DATED .....

Chancellor and Official Principal

Note: Delete words in brackets which are inapplicable.

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### EXPLANATORY NOTE

*(This note is not part of the Rules)*

These rules are made under section 26 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 and concern the procedure for the issuing of an injunction or the making of a restoration order under section 13 of the Measure.

Rules 3 to 5 satisfy who may make an application for an injunction or restoration order, and deal with the way of making and content of the application, and on whom the application must be served.

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Rules 6 and 7 concern the giving of evidence and the hearing of an application. Rules 8 and 9 concern emergency applications for injunctions and the making of restoration orders without applications. Rules 10 and 11 relate to general provisions and costs.

The Appendix contains the forms specified to be used under the Rules.