
STATUTORY INSTRUMENTS

2019 No. 1184

The Faculty Jurisdiction (Amendment) Rules 2019

Substitution of Part 4 (seeking advice prior to commencement of proceedings)

6. For Part 4 substitute—

“Part 4

Consultation and advice before starting faculty proceedings

Process for consultation and obtaining advice - outline

4.1.—(1) Before starting proceedings in the consistory court in respect of works or other proposals, intending applicants should—

- (a) consult the Diocesan Advisory Committee on the works or proposals,
- (b) where rule 4.5 or 4.6 applies, consult the relevant bodies under that rule on the works or proposals, and
- (c) once the provisions of this part, so far as applicable, have been complied with, obtain from the Diocesan Advisory Committee a notification of advice in Form 2.

(2) Consultation under this Part is not required if—

- (a) proceedings relate exclusively to—
 - (i) exhumation, or
 - (ii) the reservation of a grave space;
- (b) proceedings are sufficiently urgent to justify the grant of a faculty, the issue of an injunction or the making of a restoration order without carrying out consultation under this Part; or

(3) This part does not apply where works or other proposals relate only to matters which may be undertaken without a faculty in accordance with Part 3 and Schedule 1 (Lists A and B).

Documents etc. to be submitted to Diocesan Advisory Committee

4.2.—(1) Intending applicants must submit the following to the Diocesan Advisory Committee when consulting it on works or proposals—

- (a) the standard information in Form 1A (where consultation is being carried out on behalf of the parochial church council) or Form 1B (where consultation is being carried out by the relevant person or body) (but see paragraph (3)); and
- (b) a summary of the works or other proposals being consulted on.

(2) Intending applicants must submit the following to the Diocesan Advisory Committee when proposals reach the stage at which they are available—

- (a) any relevant designs, plans or photographs;

- (b) any advice or other material relating to the environmental implications of the works or proposals;
 - (c) any other documents giving particulars of the works or proposals; and
 - (d) any relevant correspondence with Historic England, Natural England, a national amenity society, the local planning authority or the Church Buildings Council.
- (3) If the intending applicants have previously submitted the standard information required by paragraph (1)(a) to the Diocesan Advisory Committee they need not do so again unless the information that was previously submitted has changed.

Initial advice from Diocesan Advisory Committee

4.3.—(1) When the Diocesan Advisory Committee is consulted under rule 4.1(1)(a) it must consider whether it should give the intending applicants initial advice to assist them in relation to the works or proposals and, if not, whether it should proceed to give its final advice in accordance with rule 4.9 (notification of advice).

(2) In considering whether it should give the intending applicants initial advice the Diocesan Advisory Committee must, in particular, consider whether rule 4.4 (statements of significance and needs), rule 4.5 (consultation with Historic England, amenity societies etc.) or rule 4.6 (consultation with Church Buildings Council) applies.

(3) If the Diocesan Advisory Committee considers that rule 4.4 applies, it must ask the intending applicants to provide it with statements of significance and needs if they have not already done so.

(4) If the Diocesan Advisory Committee considers that rule 4.5 applies, it must advise the intending applicants as to which of the bodies mentioned in rule 4.5 must be consulted on the works or proposals unless a body has already been consulted on the works or proposals and its response is available to the Committee.

(5) If the Diocesan Advisory Committee considers that rule 4.6 applies, it must advise the intending applicants to consult the Church Buildings Council on such aspects of the works or proposals as the Committee considers fall to be considered by the Council under that rule unless the Council has already been consulted on them and its response is available to the Committee.

Proposals involving changes to listed buildings: statements of significance and needs

4.4.—(1) Where proposals involve making changes to a listed church or other listed building intending applicants must provide the Diocesan Advisory Committee with—

- (a) a document which describes—
 - (i) the significance of the church or other building in terms of its special architectural and historic interest (including any contribution made by its setting) and
 - (ii) any significant features of artistic or archaeological interest that the church or other building hasso as to enable the potential impact of the proposals on its significance, and on any such features, to be understood (a “statement of significance”); and
- (b) a document setting out the justification for the proposals (a “statement of needs”).

(2) If proposals are likely to result in harm to the significance of the church or other building as a building of special architectural or historic interest, the document setting out the justification for the proposals must set out the basis on which it is said that the proposals would result in public benefit that outweighs that harm.

Consultation with Historic England, amenity societies and the local planning authority in certain cases

4.5.—(1) Consultation with Historic England must be undertaken if works or other proposals—

- (a) involve the demolition of a grade I or II* listed building or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest;
- (b) comprise the complete demolition of a grade II listed building or the removal of all, or a substantial part, of the structure of its interior (including any principal internal elements such as staircases, galleries, load-bearing walls, floor or roof structures and major internal fixtures such as pews, screens and organs); or
- (c) are likely to affect the archaeological importance of any building or of remains within the building or its curtilage.

(2) Consultation with each national amenity society which has an interest in works or other proposals must be undertaken if they—

- (a) involve demolition of a listed building of any grade or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest; or
- (b) involve demolition affecting the exterior of an unlisted building in a conservation area.

(3) The question of whether a national amenity society has an interest in works or proposals is to be determined by reference to the age of the building (or the relevant part of it) and the likely effect on it of the proposals.

(4) Consultation with the local planning authority must be undertaken if works or other proposals—

- (a) involve demolition of a listed building of any grade or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest;
- (b) are likely to affect the archaeological importance of a building or of remains within the building or its curtilage; or
- (c) involve demolition affecting the exterior of an unlisted building in a conservation area.

Consultation with Church Buildings Council in certain cases

4.6.—(1) Consultation with the Church Buildings Council must be undertaken if works or other proposals—

- (a) involve the demolition of a grade I or II* listed building or its alteration or extension to such an extent as would be likely to result in harm to its character as a building of special architectural or historic interest;
- (b) involve demolition of a grade II listed building or its alteration or extension to such an extent as would be likely to result in substantial harm to its character as a building of special architectural or historic interest or to its setting; or
- (c) are likely to affect the archaeological importance of a building or of remains within the building or its curtilage.

(2) Consultation with the Church Buildings Council must also be undertaken where works or proposals involve—

- (a) the conservation, alteration or disposal of an article of special historic, architectural, archaeological or artistic interest;
 - (b) the introduction of an article of special historic, architectural, archaeological or artistic interest (including new work) in a grade I or II* listed building;
 - (c) the alteration, extension or re-ordering of a church in a way that is likely significantly to affect the setting of an article of special historic, architectural, archaeological or artistic interest; or
 - (d) the movement or removal of an article of special historic, architectural, archaeological or artistic interest such that the article might be adversely affected unless special precautions are taken.
- (3) Consultation with the Church Buildings Council must be undertaken in any other case where the Diocesan Advisory Committee considers that its advice would be of particular assistance.

Consultation: procedure

4.7.—(1) When a body is consulted under rule 4.5 or 4.6 it must be informed by letter or electronic communication that it is being consulted in accordance with that rule and that a response to the consultation will be taken into account if it is received within 42 days of the date of the letter or electronic communication.

(2) The notice must be accompanied by—

- (a) the standard information in Form 1A or Form 1B;
- (b) a summary of the works or other proposals being consulted on;
- (c) any relevant designs, plans and photographs;
- (d) any other documents giving particulars of the works or other proposals; and
- (e) the statement of significance and the statement of needs prepared in accordance with rule 4.4.

(4) Any response to consultation undertaken under rule 4.5 or rule 4.6 which is received more than 42 days after the date of the letter or electronic communication sent under paragraph (1) need not be (but may be) taken into account.

Notification of material changes made in response to consultation or otherwise

4.8.—(1) If intending applicants make material changes to works or other proposals (whether in response to consultation or otherwise), they must supply details of the changes made to—

- (a) any body which has been consulted under rule 4.5 or 4.6;
- (b) the Diocesan Advisory Committee.

(2) Any further response from a body which is supplied with details of changes under paragraph (1) must be taken into account if it is received within 21 days of the day on which the body is supplied with those details; if it is received after that period has expired it need not be (but may be) taken into account.

Notification of advice

4.9.—(1) The Diocesan Advisory Committee must not give its final advice unless it is satisfied—

- (a) that the preceding provisions of this part, so far as applicable, have been complied with; and
 - (b) it has all the information it needs in order to give its final advice, including any responses from bodies consulted under rule 4.5, 4.6 or 4.8 that have been received within the time allowed.
- (2) The Diocesan Advisory Committee must give its final advice in a notification of advice in Form 2.
- (3) The notification of advice must describe the works or proposals in the manner in which the DAC recommends that they should be described in the schedule of works or proposals in the petition (see rule 5.4(1)) and in the public notice (see rule 6.2(3)(a)).
- (4) The notification of advice must state whether the Diocesan Advisory Committee—
- (a) recommends the works or proposals for approval by the court;
 - (b) does not recommend the works or proposals for approval by the court; or
 - (c) does not object to the works or proposals being approved by the court.
- (5) If the notification of advice recommends the works or proposals for approval by the court it must include a statement that the advice does not constitute authority for carrying out the works or other proposals and that a faculty is required.
- (6) If the notification of advice does not recommend the works or proposals for approval by the court it must include—
- (a) the Committee’s principal reasons for giving that advice; and
 - (b) a statement that despite the Committee’s advice, the intending applicants may, if they wish, petition the court for a faculty authorising the works or other proposals.
- (7) If the notification of advice does not object to the works or proposals being approved by the court—
- (a) the Committee must consider whether to include its principal reasons for giving that advice; and
 - (b) the notification of advice must include a statement that the advice does not constitute authority for carrying out the works or other proposals and that a faculty is required.
- (8) The notification of advice must state which of the bodies mentioned in rule 4.5 or 4.6 (if any) have been consulted on the works or proposals.
- (9) If the notification of advice recommends the works or proposals for approval by the court, or does not object to their being approved, in circumstances where a body consulted under rule 4.5 or 4.6 has raised objections to the works or proposals and has not withdrawn them, the notification of advice must include the Committee’s principal reasons for recommending the works or proposals for approval, or for not objecting to their being approved, despite those objections.
- (10) In the case of works or proposals in respect of which an injunction or restoration order is to be sought—
- (a) the Committee’s advice must be given in the form of a report or letter (instead of Form 2);
 - (b) paragraphs (2) to (7) and (9) do not apply (but paragraph (8) does apply).

Interim faculties and interim injunctions and restoration orders

4.10. This Part is without prejudice to the court’s power at any time to grant an interim faculty under Part 15 or an interim injunction or restoration order under rule 16.6.”