

DIOCESE OF LICHFIELD
FACULTY JURISDICTION
REGISTRY GUIDANCE ON TEMPORARY REORDERING WORKS

- 1) The purpose of this note is to guide Ministers as to the procedures that apply to temporary *minor* re-ordering works, under the Faculty Jurisdiction Rules 2015, Regulation 8. This rule is a general exception to the Canon law duty on a minister to ensure that any alteration, addition, removal or repair to the fabric, ornaments or furniture of the church is made under Faculty or Licence from the Consistory Court on behalf of the Bishop. The exception takes the form of a Licence issued by the Archdeacon. However the exception has important caveats, which must be adhered to, or else the changes made may be, or become, a breach of that fundamental Canon law duty. The obligation for proper authorisation arises whether or not a church is listed under the secular system; (the ability to seek a temporary re-ordering is something which is not specifically available under the listed building system (where a full consent would be needed) and is therefore a privilege available to ministers, and one which should not be abused).
- 2) The ability to re-order on a temporary basis might be on an experimental basis, perhaps so as to enable liturgical experimentation; but equally it might facilitate changes needed during a festival period, or special service, that are never intended to be permanent.
- 3) Where the appropriateness of a permanent change is being considered, the grant of the temporary Licence may help a parish decide whether it is right or not to seek the permanent change: it is a feature of the system that the grant of the Licence is only available if the change is easily reversible, and the grant does not in any sense pre-judge the Chancellor's later consideration as to whether to allow the change to be made permanent. Archdeacons will make clear that the grant does not mean that there is a *fait accompli*. Parishioners who are doubtful about the proposal may well find that latter point to be a comfort. Amenity bodies are certainly comforted by it. PCCs and Ministers should be aware that if the temporary reordering is costly, the potential for refusal of the Faculty required for a permanent reordering may mean that that cost is wasted: an example has been given of it being possible to remove pews easily, and to store them, but that the cost of buying in the replacement chairs could be lost - it might be better to seek a full Faculty in such a situation.
- 4) The procedure is only available if the works are not only *temporary* but are also *minor*. There is no definition of what is minor. The antithesis may indeed be more helpfully expressed as 'significant' rather than 'major'. The example given above as to removal of pews illustrates this well. Perhaps a removal of a single pew would be minor, but removal of all of the pews would be significant – it is for the Archdeacon to decide where, within this continuum, the boundary is to be drawn. An example, which may help ministers, is that if a (reasonable!) person who knew the church were to walk in the day after the work, would the person say '*what on earth has happened*': if so the work is likely to be significant.

- 5) These points should be carefully borne in mind:
 - a) A Licence is only available if the Archdeacon decides that:
 - i) There is no material interference with, or alteration to, the fabric of the church;
 - ii) There are no electrical works involved;
 - iii) Anything that has to be moved can be easily reinstated.
 - b) No fixture or article may be disposed of. If anything is to be moved, the Archdeacon must ensure that conditions make clear that it must be moved by a competent or qualified person; and be stored in a safe place approved by the Archdeacon.
- 6) The main caveats are these:
 - a) A Licence may not be issued if there is no minister in the parish; a minister is defined as the incumbent, or a curate in charge or priest in charge, or a team vicar with a special cure of souls assigned for the place, or a team ministry member who has pastoral care or responsibility for the parish concerned. So if the parish is served only by an assistant curate the condition is not satisfied. If this condition is not satisfied the matter must proceed by Faculty.
 - b) The Minister must make the application to the Archdeacon, jointly with the PCC. It would be helpful for the Archdeacon to know how wide consultation within the parish and congregation has been, and whether there is or is likely to be any objection.
 - c) The Archdeacon must take the advice of the DAC or such of its members or officers as the Archdeacon thinks fit. The Licence cannot be granted without such consultation. It helps the Archdeacon consider matters which may not immediately have been apparent. Whilst it is not required under the rules, this is a sensible point at which careful consideration could be given to identifying any parties with whom consultation should be had as to the reordering proposal. The Archdeacon might for example, if the building concerned is of heritage significance, think that consultation ought to be had with an amenity body as to the implications, *before* deciding to grant the Licence. But at the least, the thought at this stage will facilitate the later consideration of the results of the experiment.
 - d) The Licence can be made subject to whatever conditions the Archdeacon decides are necessary. The terms of the Licence can be amended at any stage during its currency, or it may be revoked. The Licence will specify the period for the experiment: this may be anything up to 15 months; it may be that the Archdeacon imposes a shorter period, but no extension can be granted to whatever period is imposed. Whilst not obligatory, it may be sensible to ensure that any Licence is conditioned as to the preparation of a photographic and/or documentary/plan record of the *status quo ante*, and as to the storage obligations, to ensure simple reinstatement, but also to assist the Chancellor, and amenity bodies, in their later consideration of the matter.
- 7) In cases of churches which are heritage assets, there is no obligation to prepare a Statement of Significance specifically in relation to the building before the Licence is considered, but the

Archdeacon may well consider that it would be helpful to review Significance in this formal way. A formal Statement would be needed for the later stages in any event so that early work is helpful on the subject to avoid problems at later stages.

- 8) A copy of any Licence issued must be provided by the Archdeacon to the Registry and to the secretary of the DAC.
- 9) If the Licence is refused the Archdeacon is to advise the applicant that they may still petition for a Faculty, and of course the Chancellor can grant a Faculty for the experimental reordering on such terms as s/he thinks fit.
- 10) It is important to be clear as to what happens towards the end of the period of experimentation. There are two choices available.
 - a) One is that the reordering is brought to an end and the church completely reinstated to its previous state.
 - b) This restoration will be obligatory unless the minister adopts the other option, which is to submit a full petition for a Faculty not less than 2 months prior to the end of the experimental period; if, but only if, that occurs then the experimental period may continue until the Faculty is determined.
- 11) It is vital to note that the Rules require the Petition to be submitted to the Court ie to the Registry. It is not therefore sufficient simply to seek the DAC advice prior to petitioning. Any DAC advice ought to be obtained in advance of the submission. Ministers should be careful therefore to engage in the process well before the end of the experiment, so as to avoid the obligation to restore the church in the meantime.
- 12) At the end of the experimental period, the Archdeacon will send the minister a form, to which the minister must respond within 14 days, stating whether the church has been reinstated or whether the petition has been lodged. (If by that point there is no minister in the parish the notice is served on the churchwardens). In the absence of compliance with this rule the Archdeacon has a statutory duty to ensure that the reinstatement has been carried out.
- 13) The importance of compliance with the requirement for the lodgement of the petition was stressed in the case of Christ Church Upper Armley (Leeds Consistory Court, [2017] ECC Lee 5) by Chancellor Mark Hill QC. In that case, a Licence had been issued in December 2014, but the Faculty was not sought until the end of March 2017. The applicants had, in fact, sought DAC advice in February 2016, which was prior to the expiration of the Licence; but the Chancellor noted that even that event was not 2 months prior to the end of the Licence, and – importantly - that seeking *advice* did not amount to *petitioning* for a Faculty. He determined that as a matter of law, '*there is no room for ambiguity in the rule*'. The case establishes that if DAC advice cannot be obtained in time, then the petition should still be lodged with the Registry with a request for an order to be made to stay proceedings under it, if appropriate, pending obtaining the DAC advice: the Chancellor held that '*The Faculty Jurisdiction Rules 2015 make express provision for starting proceedings notwithstanding the absence of DAC advice: r5.2(4)*,

disapplying r4.4(1). This may however require a paper application outside the online faculty system. And if by indolence or misfortune the parish allows the deadline to pass it could apply for an interim faculty under r15.1 to authorise the continuance of the reordering scheme until such time as a petition for a full faculty is determined. Any such application will be determined on its merits, one factor being its promptness.' The case is a reminder to Archdeacons of their duty to enforce the time limit provisions, regardless of the apparent cause of the non-compliance; the assessment of merit is for the Chancellor, not the Archdeacon in such cases. But it is also a reminder to Ministers of the risks that are involved in any abuse of the statutory privilege represented by this procedure.

- 14) The message, it is hoped, is clear. Ministers must take full responsibility for :
- a) Preparing a clearly reasoned application with supporting evidence and records of the current situation; understanding any heritage implications;
 - b) Demonstrating consultation within the parish and support from the PCC;
 - c) Carefully implementing the reordering and adhering to all conditions imposed by the Archdeacon, including restoring the situation if the proposal is not experimental;
 - d) Monitoring the experimental period and documenting comments made;
 - e) Consulting during the experimental period within the congregation and the parish and with any amenity bodies that might be interested in the proposal;
 - f) Diarising the end of the period, and the period 2 months prior to the end; and the DAC deadlines, to ensure that DAC advice can be secured in sufficient time to enable the petition to be lodged in good time;
 - g) responding to the Archdeacon's notice as to the termination of the reordering period;
 - h) lodging a full Faculty petition with all necessary supporting documents, if the experiment is to continue, or alternatively restoring the *status quo ante* if no petition is lodged.

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Telford
4 January 2018