

## Churchyards: closure and maintenance

A churchyard is a burial ground in “church” ownership in which burials are carried out according to the rites of the Church of England. In most cases, ownership rests with the incumbent of the benefice in his/her corporate capacity and, in most cases, the land is consecrated. This gives the land both a spiritual significance (setting it aside for ever for the burial of the dead and the worship of Almighty God according to the rites of the Church of England), but also a legal significance by which the land is then subject to the legal protection of the faculty jurisdiction.

Maintenance responsibility, though, rests not solely with the incumbent, but with the parochial church council. That includes the responsibility for grounds maintenance, boundaries, insurance, safety and ensuring that it is a place maintained appropriately for its primary purpose: as a place of Christian burial and worship.

Churchyards are more than an access route to the church building. They are there to provide for a much wider group of people: those who live in the parish, those whose name is on the electoral roll of the parish, and those who die in the parish all have a legal right to have their body or their cremated remains buried in the churchyard.

### **‘Closing’ a churchyard for burials**

Although many of our churchyards have been used for burials for centuries, it is possible to apply for the churchyard to be formally ‘closed’ for burials. This means that burials are discontinued; that those who have a legal right to burial in the churchyard then have that right removed; and that it becomes unlawful for bodies to be buried there. The closure is made final with an Order in Council made by the Privy Council under the Burial Act 1853.

As a result, the application for closure is made to the Ministry of Justice. Before beginning that process (particularly if dealing with a churchyard in which burials have not taken place for some time), it would be wise to ask whether the churchyard might have already been closed.

First, search the [London Gazette](#) for notice or confirmation of the closure order. If that is not successful, contact the Diocesan Registry where *some* (but not all) copies of closure orders are held. If that does not provide a conclusive answer (particularly where suspected that the churchyard has been closed), contact the Ministry of Justice directly ([coroners@justice.gov.uk](mailto:coroners@justice.gov.uk)).

### Applying for a 'closure' order

The Ministry of Justice's application form and details of the process can be accessed [here](#).

It sets out that an application for a closure order can be made if:

- (i) There is no usable space for new graves
- (ii) Further burials would be contrary to decency
- (iii) Discontinuance of burials would prevent or mitigate nuisance
- (iv) Further burials would constitute a health risk

If an order is made, it will automatically contain some exceptions which would enable some burials to continue in:

- existing family earthen graves with sufficient space for further interments, provided the top of no coffin is less than one metre from the level of the ground adjoining the grave
- any unused earthen grave space which has already been reserved by faculty
- existing walled graves or vaults

### Effect of 'closure'

Closure removes the legal right of burial and so any burial permitted under one of these exceptions will be a matter for the incumbent's discretion. Similarly, although closure removes the legal right for a person's cremated remains to be buried in the churchyard, the incumbent may still permit cremated remains to be buried anywhere in the churchyard. In either case, the PCC should develop a policy agreeing the circumstances in which burial will be permitted.

Any such burials should still be registered in the burial register for the churchyard; the same parochial fees remain payable for the burial; and the diocesan churchyard regulations still apply to any memorial to be installed commemorating the burial.

### Maintenance responsibility after 'closure'

If a churchyard is subject to a 'closure' order, it is possible to transfer much of the PCC's maintenance responsibility to a civil authority. Section 215 of the Local Government Act 1972 provides that where burials in a churchyard have been discontinued by an Order in Council, the parochial church council shall maintain the churchyard by keeping it "in decent order and its walls and fences in good repair."

Where that is the case, a PCC can then pass a formal and minuted resolution and then serve a written request (referring to that resolution) to take over that maintenance on either the parish/community council, or if there is no parish council the chairman of the parish meeting, or if there is no parish meeting the county or borough council. Maintenance must then be taken on by the body receiving that notice three months after the notice is served.

Within the three months following service of a notice on a parish/community council or parish meeting, that body can serve a further notice on the district or county council (as relevant) and that council shall instead

become responsible for maintenance of the churchyard. The PCC should also receive a copy of that notice so that it is clear which body it should be liaising with.

The extent of maintenance is often a contested area and it is important to maintain good relations and clarity with the maintaining council body. The 1972 Act transfers the PCC's obligation to keep the churchyard "in decent order and its walls and fences in good repair".

There are some maintenance obligations which are likely to fall outside the scope of those words (for example, where an issue relates primarily to the church building) but, on the whole, the principle should be that the churchyard is maintained as a place which is safe and appropriate for its primary purpose and for the public to visit graves (whether that is to commemorate, remember and pray for their loved ones, or whether for some other purpose, such as historical research or local interest).

A PCC's decision to transfer maintenance responsibility can be taken at any time following the making of an Order in Council discontinuing burials in the churchyard. If a churchyard was closed before 1 April 1974 (when the 1972 Act came into force), it might be possible to argue that liability for maintenance of the churchyard has been accepted by a civil authority under section 18 of the Burial Act 1855 if there is evidence of that authority's involvement in maintenance, notwithstanding the lack of a subsequent notice under the 1972 Act.

If no evidence of prior involvement can be found, a notice under the 1972 Act can be served at any point after the Order in Council (which PCCs might wish to mark as 'without prejudice' to the PCC's contention that the civil authority had already accepted responsibility under the 1855 Act).

### Further considerations

Following closure of a churchyard as well as following the transfer of maintenance responsibility, ownership of the land remains vested in (legal owned by) the incumbent of the benefice. The land continues to benefit from the protection of the faculty jurisdiction and no property or contents are handed over to any other body.

In particular, memorials installed in the churchyard remain the private property of the 'heirs at law' of the persons commemorated on them. If works to memorials are proposed (which most often arises where there are concerns related to the safety of the memorials and the surrounding area) there is a legal obligation to attempt to trace the owners of the memorial to consult with them as to what is proposed. In that case, and with most other works to churchyards, the body carrying out those works will also need to apply for and obtain a faculty from the Consistory Court before carrying out those works. Enquiries about this should be made to the Diocesan Registry.

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