



Ministry of **JUSTICE**

CLOSURE OF CHURCH OF ENGLAND CHURCHYARDS TO FURTHER BURIALS

1. These notes provide guidance to applicants wishing to close formally a Church of England churchyard to further burials by Order in Council under the provisions of section 1 of the Burial Act 1853. Orders to discontinue burials may be required where burial in the churchyard is no longer appropriate and the common law or statutory rights of burial in the parish churchyard need to be extinguished. A statutory process for discontinuing burials in non-Church of England churchyards is not required as such burial rights do not apply.
2. The procedure and guidance notes have been agreed with the Church of England, the Local Government Association, the National Association of Local Councils and the Society of Local Council Clerks.

GROUNDS FOR CONSIDERATION

3. It has been agreed that an Order may be sought where one or more of the following circumstances pertain:
 - there is no usable space for new graves;
 - further burials would be contrary to decency;
 - discontinuance of burials would prevent or mitigate nuisance;
 - further burials would constitute a health risk.
4. The first of these grounds applies where the churchyard is full, and there is no further usable land where graves could reasonably be made (e.g. areas where the land is too steep, waterlogged or has insufficient depth to be used, or where use would unreasonably encroach on or interfere with existing buildings, paths or other structures). Closure on these grounds need not prevent burials in existing graves which have sufficient room. Where the other grounds for closure apply, which will be rare, it would be likely to be necessary to cease burials in the churchyard altogether even if there is room for new graves or still some space in existing graves
5. Orders are not normally made to close part of a churchyard on the grounds that it is full. This is because any burial rights could and should continue to be exercised in any remaining open part of the churchyard or in any other open church burial grounds in the parish in which relevant parishioners have rights of burial and which have space for further interments. However, where part of a churchyard has already been closed by Order, applications will be considered for the closure of the remainder of the site.
6. In some cases it may not be possible to close a churchyard, or part of it, for legal reasons (for example, where the burial ground was opened with the approval of the Secretary of State - a former requirement in certain circumstances). Consideration is being given to an amendment to the legislation to address this issue.
7. Applications for Orders will not be considered if made only to enable responsibility for maintenance to be transferred to the local authority. If financial support is needed to maintain a burial ground (of any kind), local authorities already have discretionary powers to provide such support.

Exceptions

8. A churchyard will be considered eligible for an Order in Council on the grounds that it is full if there is no space for new graves. By default, provision will be made for burial to continue to be allowed:
- in existing walled graves or vaults which have room for further interments, provided each coffin is adequately enclosed by brickwork or stonework;
 - in existing family earthen graves which have sufficient space for further interments of family members, provided the top of no coffin is less than one metre below the level of the ground adjoining the grave;
 - in any unused earthen grave space which has been reserved by faculty, provided the top of no coffin is less than one metre below the level of the ground adjoining the grave.

unless the parochial church council requests burial to be discontinued in such graves or spaces.

9. All of these exceptions will therefore be included in the order unless the appropriate box on the application form is ticked to indicate the graves are not to be included.
10. If, unusually, a parochial church council considers that other exceptions to a closure order should apply, a request to this effect, with reasons, should be submitted with the application.

Cremated Remains

11. The closure of a churchyard under the Burial Act 1853 is understood not to prevent the interment of cremated remains, but such interments require a faculty and if existing interments are likely to be disturbed could also require a Ministry of Justice licence.

Condition of the Churchyard

12. Unless the churchyard is closed and the maintenance responsibility has been transferred to the local authority, it is the legal responsibility of the parochial church council to maintain the grounds, and walls and fences, in decent order. Further details can be found in "Responsible Care For Churchyards: A brief practical guide for parishes", available at

<http://www.cofe.anglican.org/about/churchcommissioners/pastoralandclosedchurches/pastoral/churchproperty/careofchurchyards.doc>

13. Although there is provision for this maintenance responsibility to be transferred by the parochial church council to the local authority at any time once the churchyard has been closed by Order, it is considered good practice, and only fair and reasonable, for any parochial church council contemplating such a transfer of responsibility to ensure that the churchyard and its walls and fences are in good condition at the time of the application. If such an application is likely to be made soon after a closure Order has been obtained, it would be helpful for the parochial church council to have identified and carried out any remedial work necessary, including in relation to memorials.
14. Guidance on memorial maintenance can be found in the General Synod Legal Advisory Commission document 'The Maintenance Of Monuments In Closed Churchyards' published in January 2007. This can be found at:

<http://www.cofe.anglican.org/about/churchlawlegis/guidance/monumentmaintenance.rtf>

15. The Ministry of Justice has also published guidance on memorial safety entitled 'Managing the safety of Burial Ground Memorials', and has also produced a set of FAQs

on the subject. A copy of both documents can be gained on application to the address at the bottom of this guidance or by downloading them from:

<http://www.justice.gov.uk/guidance/burials.htm>

War Graves

16. The Commonwealth War Graves Commission (CWGC) is responsible for the care of war graves. Where the Ministry of Justice makes representations to the Privy Council for a closure Order, the CWGC will be advised so that it can take any action it considers necessary in respect of such graves if a change in responsibility for maintenance of the churchyard occurs. In the meantime, where a parochial church council contemplates transferring maintenance responsibility to the local authority on obtaining a closure Order, it would be helpful if details of any war graves could be brought to the attention of the local authority when giving notice of the intention to apply for an Order.

THE APPLICATION PROCESS

17. The decision to apply for closure of the churchyard must first be agreed by the parochial church council, along with whether or not to transfer the responsibility for maintenance, and an appropriate resolution passed.

The application form

18. Applications are requested to be made using the form available from the Ministry of Justice. The form should be completed, in block capitals, by the secretary of the parochial church council, giving all appropriate information.

Where the parochial church council intends to request transfer of the maintenance responsibility

19. Local authority representatives have requested that if the parochial church council intends to transfer the maintenance responsibility in the event of the application being successful, the parochial church council should give at least twelve months' notice to enable appropriate budgetary provision to be made.

20. To assist this, both forms at Part B should be completed and sent with a covering letter to the relevant council(s) (i.e. the Town or Parish Council, or the chairman of the parish meeting if there is one, and the council of the district, metropolitan district, London borough or unitary authority, as appropriate). A map of the churchyard (see paragraphs 31 - 32) should be included to make clear the boundaries of the churchyard subject to the application.

21. The covering letter to the council(s) should:

- explain why a request for a closure Order is being made, bringing to the council's attention the grounds under which the application is being made;
- explain that the condition of the churchyard is described in order to assist with planning for the provision of maintenance, although the condition does not provide grounds for objecting to the closure;
- request the council to complete question B4, and if they do not agree with the grounds cited, to explain why;
- ask for the form to be returned to the parochial church council within a reasonable time once it has been completed (e.g. one month).

22. This early notification of the intention to request transfer of maintenance responsibility (which does not replace the statutory power to request such a transfer after an Order in Council is made) will provide the councils with an opportunity to comment on the proposed grounds for closure. Before doing so, they may want to satisfy themselves

that the churchyard is full, or that there is evidence of the other grounds cited, and may wish to visit the site. Parochial church councils are asked to facilitate any reasonable enquiries from local councils.

23. Early notification of the application will also enable the councils to consider the practical, as well as the budgetary, implications of a transfer of maintenance responsibility. To assist with this, Part B asks the applicant to describe the overall condition of the churchyard using one of the definitions provided. Provision is made for this information to be supplemented with additional detail, such as in respect of the churchyard's pathways, walls and fences, memorials and trees.
24. If in response either of the councils object to the proposed grounds of the application, and the objections cannot be resolved directly between the parochial church council and the local authority councils, it remains open to the parochial church council to pursue the application but in that event it should be submitted to the Ministry of Justice with details of the nature of the objections and the steps taken to seek resolution.
25. Either way, when the Part B forms have been completed and returned to the parochial church council, they should be reattached to Part A and both parts sent to the Ministry of Justice, together with a copy of the resolution of the parochial church council regarding closure, any comments from the local authorities and two copies of a map of the churchyard (see paragraphs 31 - 32 below), ensuring that all the information requested has been provided.
26. The Ministry of Justice will then consider the application. However, where the parochial church council intends to request transfer of maintenance responsibility, the Ministry of Justice will defer the timing of any representations for an Order in Council in order to ensure that the full notice period has elapsed.

Where the parochial church council intends to retain maintenance responsibility

27. If the parochial church council intends to retain maintenance responsibility for the churchyard, the forms at Part C should be completed and sent with a covering letter to the relevant council(s) (i.e. the Town or Parish Council, or the chairman of the parish meeting if there is one, and the council of the district, metropolitan district, London borough or unitary authority, as appropriate). A map of the churchyard (see paragraphs 31 - 32) should be included to make clear the boundaries of the churchyard subject to the application.
28. The covering letter to the council(s) should
 - explain why a request for a closure Order is being made, bringing to the council's attention the grounds under which the application is being made;
 - explain that the PCC intend to retain the responsibility for the maintenance of the churchyard themselves;
 - request the council to complete question C2, and if they do not agree with the grounds cited, to explain why;
 - ask for the form to be returned to the parochial church council within a reasonable time once it has been completed (e.g. one month).
29. If in response either of the councils object to the proposed grounds of the application, and the objections cannot be resolved directly between the parochial church council and the local authority councils, it remains open to the parochial church council to pursue the application but in that event it should be submitted to the Ministry of Justice with details of the nature of the objections and the steps taken to seek resolution.
30. Either way, when the Part C forms have been completed and returned to the parochial church council, they should be reattached to Part A and both parts sent to the Ministry of Justice, together with a copy of the resolution of the parochial church council regarding closure, any comments from the local authorities and two copies of a map of the

churchyard, ensuring that all the information requested has been provided. The Ministry of Justice will then consider the application.

Maps

31. Applications should be accompanied by two copies of a map clearly showing the location of the churchyard. The first should be marked with the boundaries of the site to be closed. If, unusually, part only of a churchyard is to be closed (see paragraph 5 above), it would be helpful for the map to show which part of the site is the subject of the application, and the status of the remaining part (or parts) of the churchyard. This would be particularly helpful in cases where a churchyard has been successively enlarged by extensions. It would also be helpful for the map to indicate where there may be an adjacent burial ground (e.g. a parish cemetery). The second copy should be an unmarked copy of the same map.
32. A suitable scale for the Ministry of Justice's purpose is 1:1250. If there are difficulties obtaining such a map, the planning department of the local authority may be able to assist.

Consultation with parishioners

33. If satisfied that the application can properly proceed, the Ministry of Justice will ask the parochial church council informally to bring the proposals to the attention of local parishioners and to invite any comments to be sent direct to the Ministry of Justice within a suitable length of time, not less than one month. It will be open to the parochial church council to decide how best to proceed, but options may include placing a suitable notice in or around the church, in a parish newsletter or website, or in a local newspaper. Whatever option(s) are adopted, the Ministry of Justice will provide suitable wording. The Ministry of Justice should be sent a copy of the advertisement once it has been published, and told when the date for the receipt of comments is to expire.

Consideration of objections

34. Objections or comments may be made either by parishioners or local authorities. They will only be considered valid if they relate to the grounds for closure (for example, there is believed to be space available for new graves, or that further burials will not cause a health hazard or otherwise be undesirable). Where the Ministry of Justice receives any valid objections, the parochial church council is likely to be asked for its comments before any decision is taken.
35. Concerns about the condition of the churchyard or the financial implications of any transfer of maintenance are not issues which are relevant to an application for a closure Order. Any such issues should normally have been raised and considered before an application is made to the Ministry of Justice, and consideration of the application will not normally be deferred pending resolution of such issues.
36. Misunderstandings about the effect of a closure Order sometimes arise and parochial church councils may find it helpful to make clear to parishioners and other local people that burials can usually continue in existing graves or spaces reserved by faculty. Moreover, a closure Order in itself has no effect on public access to the churchyard or the rights and responsibilities of the parochial church council in relation to the churchyard.

Notice of intention to apply for an Order

37. If there are no valid objections, the Ministry of Justice will give the parochial church council at least ten days' notice of the intention to apply to the Privy Council for a closure Order. This is to comply with the requirements of the legislation and to provide a further opportunity for comments or objections.

Consideration by the Privy Council

38. After the Privy Council Office has received the Secretary of State's representations it will publish a notice in the London Gazette of the date on which Her Majesty in Council has ordered the application to be considered. It will send copies of the notice to the parochial church council and local authorities concerned. This notice will need to be posted on the church door and other conspicuous places in the parish for at least one month before the date of consideration.
39. Once a closure Order has been made, copies of the Order will be sent to the church and local authorities by the Privy Council. A copy of the Order will also be sent by the Ministry of Justice to the relevant Diocesan Registry.

STATUTORY PROCEDURE FOR THE TRANSFER OF MAINTENANCE

40. If a parochial church council wishes maintenance responsibility for a churchyard closed by Order in Council to be taken over by the local authority, it will need to serve a written request to this effect on the town or parish council or, if there is none, the district council (or equivalent). It would be helpful for any such request to be accompanied by details regarding the current condition of the churchyard (see paragraphs 19 – 26 above).
41. Where such a request is served on the town or parish council, that council must take over maintenance within three months or must have transferred the request, within that period, to the district council or equivalent, and have notified the parochial church council that it has done so. Once those three months have expired, and the request has been validly served, the district council must take over the responsibility for maintenance.

ENQUIRIES

42. Enquiries about these notes may be made to:

Coroners and Burials Division
Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 0203 334 6390
Fax: 0203 334 2233