

Closed Churchyards

What is a closed churchyard?

A churchyard is sometimes described as being "closed" when it is no longer used for burials. However, from a legal point of view a churchyard is not formally closed until an Order in Council has been issued under the Burials Act, to prevent further burials from taking place.

SECTION I: How to check if your churchyard is formally closed

There are three potential ways to establish whether your churchyard has been closed:

- Search the London Gazette website (www.londongazette.co.uk/) to see whether they have a copy of a Closure Order.
- Contact the Church Buildings Team who have access to a spreadsheet which has been provided by the national church, which records all known historic Orders in Council to close churchyards. Their contact details can be found at the end of this guidance sheet.
- Contact the Coroners and Burials Division of the Ministry of Justice who hold a complete list of closed churchyards. Their contact details can be found at the end of this guidance sheet.

SECTION 2: How to close a churchyard

Applying for an Order in Council is relatively straightforward. The Ministry of Justice have issued guidance notes which explain the criteria for closure and an application form needs to be completed by the PCC and your parish council before being returned to them for processing. Before making an application to close a churchyard, please contact the Ministry of Justice, to ensure that you have the latest version of the application form and the most current guidance.

The grounds for making an order in council are:

- that further burials would constitute a public health risk;
- that further burials would be contrary to decency;
- that burials should be discontinued for the prevention or mitigation of nuisance;
- that there is no proper room for new graves; or
- another valid grounds as justified by the PCC.

In making the application, a PCC should include details of any exceptions which they wish to have included within the order, which would allow burials in very specific instances to continue (see the next section on the Effects of Closure). Once the application has been received by the Ministry of Justice, the PCC will be sent notices about the proposed closure and these must be fixed to the doors of the affected church, as well as being given to the incumbent and appropriate local authority (parish/town council).

SECTION 3: What are the effects of closure?

The purpose of the Order in Council is to prevent further coffin burials from taking place, but many Orders include specified exceptions within which particular burials may continue. Such exceptions may include:

- a) Where a faculty has been granted to reserve a gravespace, the person named in that faculty may be buried,
- b) a body may be buried in the same grave as a relative, provided that following the second burial there will still be at least one metre of earth above the second coffin, and
- c) burials may take place in existing walled graves or vaults which have room for further interments, provided each coffin is adequately enclosed by brickwork or stonework.

It is therefore vital that the particular Order in Council for a specific church is read very carefully, understood, and recorded appropriately for reference by future clergy and parish officers.

Beyond any specified exceptions, it is not possible to bury ANY additional coffins within a closed churchyard. Any person who permits a burial to take place where no express exemption is in place, commits a criminal offence and their conduct is likely to be reported to the Ministry of Justice.

Cremated remains can only be buried in a closed churchyard, if either

- a Faculty is granted which authorises the interment, or
- the cremated remains are to be buried in an area set aside in a designated Garden of Remembrance which has been authorised by faculty.

There is no automatic right to inter cremated remains within a family grave which exists in a closed churchyard, unless a specific faculty has been granted or it is otherwise permitted under an express exemption included in the Order in Council.

Once an Order in Council to close a churchyard has been made, it is not possible to revoke it, but it is possible to vary the terms of the order, for example, to redefine the boundaries of the churchyard where they have been inaccurately described, or to change the categories of burial which are to still be allowed.

SECTION 4: Responsibility for the maintenance of a closed churchyard

A closed churchyard remains subject to the Faculty Jurisdiction and, after an Order in Council is made, the PCC remains responsible for maintaining the churchyard as it always has done, keeping the churchyard and its walls, fences, gates, trees and paths in good repair.

The responsibility for the maintenance of the churchyard only changes if and when a PCC decides to give notice under Section 215 of the Local Government Act 1972 to their appropriate local authority (parish or town council). There is no obligation on a PCC to transfer responsibility for maintenance, even if the churchyard is formally closed by Order in Council.

Churchyards closed since the Local Government Act 1972

Under Section 215 of the Local Government Act 1972, a PCC may give notice to the local parish or town council, requiring them to take over the responsibility of maintaining a churchyard which has been closed by Order in Council. Three months after the giving of the notice, the parish or town council becomes legally responsible for maintaining the churchyard, unless it gives notice under the Act to the district council, requiring the district council to take over the responsibility on their behalf. Although the statutory period for giving notice to the parish or town council is three months, the General Synod Office requested in 1981 that PCCs aim to give parish/town councils at least twelve months' notice, in order to allow them sufficient time to make appropriate provision in their budgets for this new responsibility. There are also several other options by which maintenance responsibility and or the costs associated in doing so can be devolved, under Section 214(6) of the Local Government Act 1972, and parish or town councils should assess their options if notice is served on them.

Churchyards closed by Order in council before the Local Government Act 1972

In the case of a churchyard closed before the 1972 Act came into force (1st April 1974), Section 18 of the Burial Act 1855 initiated the principal of the transfer of responsibility for maintenance of closed churchyards to local authorities, by requiring that the cost for doing so be taken out of what was then the poor rate. The 1855 Burial Act recognised that churchyards were (as they still are) the common burial places of all parishioners, irrespective of their religious beliefs, and as a result of being available for the whole community, it was felt reasonable that when closed, the cost to keep the churchyard in good order should be borne by the wider community via the poor rate.

Although maintenance responsibility can be transferred in this way, the legal ownership of the churchyard remains unaffected and all other rights, powers and functions remain under the control of the incumbent of the parish. The churchyard also remains a consecrated area and subject to the faculty jurisdiction, so the Parish, Town or District Council will need to apply for a Faculty or Archdeacon's Authorisation to authorise any works in the churchyard other than routine maintenance.

SECTION 5: What a PCC should consider when deciding whether to transfer maintenance responsibility to another body

If a PCC decide to transfer maintenance responsibility following the procedure outlined in the previous section, the transfer is compulsory and it is not possible for a Parish, Town or District council to refuse to accept the responsibility, irrespective of either the condition of the churchyard or their ability to meet the additional maintenance cost. There are however a number of aspects for a PCC to consider before deciding whether or not to pursue this:

The advantages of transfer are that:

- the PCC would have no functional/management responsibility for the upkeep of the churchyard;
- the PCC would not have to use its own financial resources for maintenance; and
- the PCC would not have to employ staff or contractors to carry out maintenance work.

The disadvantages are:

- it is likely that the Parish or District Council will put the additional cost of this maintenance on the council tax payers of the parish, which could have pastoral implications;
- the cost of maintenance by the Parish or District Council may be higher than that which the PCC would incur;
- the standards and policies of the Parish or District Council in relation to the upkeep of the churchyard may not be to the liking of the PCC or to the local inhabitants.

Once responsibility has been transferred, the Parish, Town or District Council take over the entire responsibility for maintaining the churchyard, and its walls, gates, fences, grass, trees, etc., so that the PCC has no residual maintenance obligation in respect of that churchyard.¹ A PCC could still in theory by mutual agreement offer voluntarily to undertake some element of the maintenance tasks, if for example there was a willing and keen member of the congregation, but the formal responsibility would no longer be theirs.

The case in this diocese where Lydbrook PCC took the Forest of Dean District Council to court in 2003¹ reinforced the legal position that the duty to the churchyard is one of substantive maintenance and not just the management of decline. The decision in this case also made it clear that the maintenance obligation was not conditional on adequate funds being available.

SECTION 6: Other considerations

Responsibility for the maintenance and safety of memorials within a closed churchyard

In a closed churchyard, the primary responsibility for the maintenance and safety of a memorial or monument remains with the owner of the monument or his/her heirs at law.¹ However, if the owner does not fulfil this responsibility (or cannot practically be traced due to the age of the memorial), a secondary responsibility falls to the body that have the duty to maintain the churchyard. If the Parish, Town or District Council has taken over the maintenance of the churchyard, its maintenance obligation to keep the churchyard in decent order, would extend to these monuments as well.¹

Health and Safety

The responsibility for health and safety in a closed churchyard rests with the body which has the maintenance responsibility for it. It is a commonly thought that the legal responsibility for health and safety relates to the ownership of land or structures on that land, but in reality the responsibility lies with the 'occupier' of that land, and this would be whichever body is responsible for the maintenance¹. It is therefore important that the PCC or local authority's insurance policy reflects this responsibility appropriately, and that a reasonable approach to health and safety is taken, identifying and mitigating potential risks as and when they arise.¹

SECTION 7: FURTHER READING AND CONTACTS

Further Reading

- The Churchyards Handbook, 4th Edition 2001, Edited by Thomas Cocke FSA, Church House Publishing
- Ministry Of Justice Guidance - Burial grounds: guidance on managing unstable gravestones, 20 November 2014 www.gov.uk/government/publications/burial-grounds-guidance-on-managing-unstable-gravestones
- Ministry Of Justice Guidance - Burial grounds: guidance for managers, 2 January 2010 www.gov.uk/government/publications/burial-grounds-guidance-for-managers
- Closed Churchyards and Disused Burial Grounds – Legal Topic Note, November 2007 National Association of Local Councils
- Legal Opinions Concerning the Church of England, Eighth edition 2007, Church House Publishing
- Legal Opinion on the maintenance of monuments in closed churchyards, January 2007 www.churchofengland.org/media/394351/maintenance%20of%20monuments%20in%20closed%20churchyards.pdf
- Legal Opinion on churchyards: liability for personal injury accidents, January 2013 [www.churchofengland.org/media/1732431/churchyards%20liability%20for%20personal%20injury%20accidents%20\(final\).pdf](http://www.churchofengland.org/media/1732431/churchyards%20liability%20for%20personal%20injury%20accidents%20(final).pdf)
- Ecclesiastical Insurance – Health and Safety advice including guidance notes and risk assessment templates for download at:
www.ecclesiastical.com/churchmatters/churchguidance/churchhealthandsafety/index.aspx

Contacts

War Memorials Trust

The War Memorials Trust, 42a Buckingham Palace Road, London SW1W 0RE,
Email: info@warmemorials.org Telephone: 0300 123 0764

Ministry of Justice

Ministry of Justice Coroners and Burials Division 3rd Floor 102 Petty France London SW1H 9AJ
Email: coroners@justice.gsi.gov.uk Telephone: 0203 334 6390

Registrar

Gloucester Diocesan Registrar – Mr Jos Moule, Veale Wasbrough Vizards, Narrow Quay House, Narrow Quay, Bristol BS1 4QA Email: gloucesterregistry@wv.co.uk Telephone 01173 145680

If you need any help or support with closed churchyards,
please contact us at Church House on 01452 410022 or by email at
dac@glosdioc.org.uk