

CHURCHYARDS

Faculty Jurisdiction

Section 11(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 states that all churchyards belonging to parish churches are subject to the Faculty Jurisdiction.

Maintenance of a Churchyard

Section 4(1)(ii)(c) of the Parochial Church Councils (Powers) Measure provides that a Parochial Church Council is responsible for the maintenance of a churchyard. However, there is a procedure for transferring to a Parish Council or District Council the responsibility for maintenance of a churchyard which has been closed for further burials by Order in Council (see below).

Closed Churchyards

A churchyard is sometimes described as closed in the non-legal sense that burials have been discontinued there. But the term closed may be used in a legal sense to mean that a churchyard has been closed for further burials by an Order in Council.

Applying for a Closing Order

A Parochial Church Council may apply for a closing order when there is no room left for burials in a churchyard (apart from graves which have been reserved by Faculty but have not yet been filled). The Department for Constitutional Affairs has issued a special application form and notes on the procedure for applying for a closing order. (Department for Constitutional Affairs, Coroners Division, Ground Floor, Abbey Orchard House, 4 Abbey Orchard Street, London SW1P 2HT Tel: 0207 340 6659 or 0207 340 6660).

If a PCC is unsure as to whether a churchyard has been closed by Order in Council, an enquiry should be addressed to: Burials Unit, Ministry of Justice, 8th Floor, 102 Petty France, London SW1H 9AJ. Telephone: 020 3334 6413.

Effects of Closure

No further coffin burials may take place in the churchyard, unless they fall within an exception specified in the closing order. It is common for a closing order to specify, by way of exception to the prohibition against further burials, that (a) burials may still take place in graves which have been reserved by Faculty, and (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. When applying for a closing order, a Parochial Church Council should ask the Department for Constitutional Affairs to include these exceptions.

Cremated remains may continue to be buried in a closed churchyard, provided that either (a) a Faculty is obtained to authorise an interment, or (b) the cremated remains are to be buried in an area already set aside by Faculty for the interment of cremated remains.

The closed churchyard remains subject to the Faculty Jurisdiction, and the Parochial Church Council remains responsible for continuing to maintain the churchyard, unless and until it has transferred responsibility by giving notice under Section 215 of the Local Government Act 1972.

Transfer of Responsibility

Under Section 215 of the Local Government Act 1972, a Parochial Church Council may give notice to the Parish Council, requiring the Parish Council 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 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.

Once responsibility has been transferred, the Parish or District Council will have the same responsibility for maintaining the churchyard, and its walls, gates, fences, grass, trees, etc., as the Parochial Church Council had prior to the giving of notice to transfer responsibility.

The Parish or District Council will need to apply for a Faculty to authorise any works in the churchyard other than routine maintenance.

Access for the Disabled

The Association of Burial Authorities has produced a note for guidance concerning the application of the Disability Discrimination Act 1995 to burial grounds.

Graves

A parishioner has a right to be buried in the churchyard of the parish in which he or she resides, provided that it has not been closed for burials by Order in Council, and provided that there is still room for burial. However, a parishioner does not have a right to be buried in a particular place, which is a matter for the Minister to decide at his sole discretion. Anyone wishing to be buried in a particular place in a churchyard can only acquire a right to be buried there by obtaining a Faculty to authorise the reservation of an exclusive right of burial in a particular grave.