

# Churchyard Management



# Churchyards: the law

- Strictly speaking, churchyards are private property, owned by the **incumbent** as part of the benefice.
- But equally, they are important **community spaces**, and contribute much to the character of the local area. They are also **public facilities**, providing burial space to local residents whatever their connection with the Church or indeed their faith.
- They are **extensions of the Church's witness** to God's promise of eternal life.
- And yet many bereaved relatives understandably feel a strong sense of **personal ownership** of the graves of their loved ones.
- The need to balance all of the above has led to regulation at law.

# The Incumbent

- A churchyard is usually part of the property of the benefice. The Incumbent is therefore the **owner** of the churchyard and should be registered as the proprietor at HM Land Registry.
  - Technically, the incumbent is entitled to the grass cuttings, the fruit from the trees, etc!
- As the owner of the churchyard, the incumbent has the power (subject to any reservations) to:
  - make decisions as to where in the churchyard each burial takes place; and
  - decide on whether those without a right to burial should nonetheless be permitted.

# The Parochial Church Council

- The PCC is not the owner of the churchyard but is responsible for the “**care and maintenance**” of the churchyard.
- The PCC also has a role as the ‘voice of the parish’ and:
  - as the churchyard starts to fill, should work with the incumbent to devise policies on accepting burials; and
  - is consulted when grave space reservations are sought.

# The Chancellor and Consistory Court

- Churchyards, together with other land within the curtilage of a church, are within the faculty jurisdiction. This means that they are under the ultimate control of the consistory court, presided over by the Diocesan Chancellor, **Lyndsey de Mestre KC**.
- A faculty from the court is required for all changes to churchyards other than:
  - routine maintenance and the digging of new graves;
  - matters permitted under **List A** and **List B**;
  - matters permitted under the **Churchyard Regulations**.
- Faculties are also required for all **exhumations** and **grave reservations**.



# The Archdeacon

- A source of advice and support.
- Can authorise certain **List B** matters relating to churchyards (such as benches and noticeboards, wall repairs, planting and removal of trees)
- Can apply for a **restoration order** if works have been done without approval.



# Diocesan officers

- A source of practical advice and support.
- Gateway to the **Diocesan Advisory Committee**, which advises the Chancellor on faculty applications.
- Communications advice in case of disputes or other controversial matters.



# Diocesan registry

- Assistance with legal queries.
- Administers the consistory court on behalf of the Chancellor.
- Guidance on forms and processes.
- Tel:           **020 7593 5015**
- Email:       **stalbansregistry@wslaw.co.uk**



# Rights to burial

- People have a right to burial in open churchyards if:
  - they **resided in the parish** (even if they die elsewhere);
  - they **die in the parish** (even if they resided elsewhere);
  - at the date of death, they were **on the electoral roll** of the parish.
- Rights to burial under the first two criteria do not depend on church attendance or Christian faith.

# Rights to burial

- A person who has the right of burial also has the right to burial of his/her ashes.
- A person is not required to have a Church of England funeral or committal service. At the graveside they can elect for any Christian service, or no service at all.
- The minister may, after consulting the PCC, give permission for a burial where the deceased does not otherwise have the right to burial.

# Rights to burial

- A faculty is required to dedicate an area of the churchyard as a “**garden of remembrance**” or otherwise earmarked for ashes burials only.
- To extinguish rights to burials, it is necessary to apply for the churchyard to be **closed** by Order in Council. Once closed, burials may not take place except as permitted by the closure order, or in a garden of remembrance authorised by faculty.

# Grave space reservations

- A person may apply for a grave space reservation by faculty.
- Grave space reservations **must never** be made informally by agreement with the parish – such agreements are unenforceable and will not displace the rights of others to be buried in that space first.
- The Chancellor will enquire as to the capacity of the churchyard and the policy of the PCC prior to awarding a faculty.
- Grave reservation faculties are for a limited period only.

# Burial registers

- It is vital to keep full records of all burials – both full body and ashes.
- The burial register is a statutory register held by the incumbent (or, in a vacancy, the churchwardens).
- A burial plan should show an accurate location of all burials (and their depth) and grave space reservations.
- In addition, the churchwardens should keep a *terrier* of all landholdings, which includes information about churchyards, rights of way, trees, etc.

# Churchyard Regulations

## Memorials and Inscriptions

Relevant Regs: 2.2-2.7; 3

- The **incumbent owns** the churchyard
- The **PCC manages** the churchyard
- The introduction, renewal, removal or alteration of memorials are entirely within the jurisdiction of the **Chancellor**.
- The **family** will own the memorial (but not the plot).
- The Regulations set out the parameters within which the Incumbent may authorise memorials: Materials, shapes, sizes, decorations, text (wording and lettering), etc.

# Churchyard Regulations

## Memorials and Inscriptions

Relevant Regs: 2.2-2.7; 3

- Proposal falls within regs → You **MAY allow** it but **CAN refuse** it. Faculty may be sought on refusal.
- Proposal falls outside regs → You **CANNOT allow** it. A faculty must be sought. Anything done outside the regs could be subject to a restoration order.

# Churchyard Regulations

## Memorials and Inscriptions – Forms CR1 and CR2

Relevant Regs: 2.2-2.7; 3

Which form?

- Application for memorial **introduction** → CR1
  - No application should be made for the introduction, nor permission granted until at least six months after the date of burial.
- Application for minor **amendment or repair** → CR2
- If request is **rejected** → faculty petition.

# Churchyard Regulations

## Memorials and Inscriptions – Forms CR1 and CR2

Relevant Regs: 2.2-2.7; 3

### Contents:

- **Applicant** – Personal information and basic details; confirmation of understanding
- **Funeral Director/Monumental Mason** – Particulars of proposed memorial/proposed amendments.
- **Monumental Mason** – Certificate of Compliance
- **Incumbent/Rural Dean/Archdeacon** – Decision

# Churchyard Regulations

## Memorials and Inscriptions – New memorials

Relevant Regs: 2.2-2.7; 3

- Monuments and headstones:
  - ✓ Regulation Headstones
  - ✓ Regulation Crosses
  - ✓ Regulation Boulders
  - ⊗ Horizontal slabs or plaques
  - ⊗ Columbaria, statues, sundials, bird baths, obelisks
- Other memorials:
  - ✓ Regulation Flower vases
  - ⊗ Kerbs, railings, fencing, chippings, artificial grass.

*“Any memorial placed over a grave has to be carefully chosen in recognition that the churchyard is sacred ground...”*

*“Many churchyards are the settings of historic churches, which are listed as being of special architectural or historic interest...”*

# Churchyard Regulations

## Inscriptions

Relevant Regs: 2.2-2.7; 3

- **Inscriptions:**
  - ✓ Basic biographical information
  - ✓ Regulation lettering
  - ✓ Crests (with permission of regiment or organisation)
  - ✓ Appropriate decorative motifs (e.g. Christian symbols, flowers etc.)
  - ⊗ QR codes
  - ⊗ Advertisement or trademark
  - ⊗ Other decorative motifs
  - ⊗ Photographs

*Epitaphs are there "to identify the resting place of the person's mortal remains, to honour the dead, to comfort the living and to inform posterity."*

*"Dedications should be simple, reverent and appropriate."*

*"The headstone is a public reminder that the person has lived on earth and has now entered eternal life."*

# Churchyard Regulations

## Memorials and Inscriptions – Amending or removing memorials

Relevant Regs: 2.4,3.4 & 3.5

- The monument belongs to the family.
- **Extensions to memorials:**
  - ✓ Additional inscriptions to the front of a headstone
  - ✓ Additional names and dates only may be added to reverse of a headstone
  - ✓ Regulation extension to base of a headstone
  - ⊗ Detailed inscriptions to the front of a headstone
- **Removal of memorials:** only permitted for repair, maintenance, inscription or like-for-like replacement.

# Churchyard Regulations

## Burial of Ashes

Relevant Regs: 6

- **General Rules:** Ashes should be buried in part of churchyard set aside for burial of ashes or in an existing grave with the consent of Incumbent.
  - ✓ Burial in a suitable perishable or biodegradable container
  - ✓ Poured directly into the ground
  - ⊗ Scattered or strewn
- **Gardens of Remembrance:**
  - Establishment:
    - Small parishes (<600 persons on roll) → Incumbent and PCC agreement + average of less than 3 ashes burials per year + Archdeacon approval
    - Other parishes → Faculty
  - Memorial plaques: Flush with the turf and of a size specified in the regs OR as permitted by the faculty.

# Churchyard Regulations

## Temporary items

Relevant Regs: 3.3(i); 4

*"Any memorial placed over a grave has to be carefully chosen in recognition that the churchyard is sacred ground and is the area that forms the setting for the church building"*

- **General Rule:** No loose items to be left in the area of the grave.
- **Exceptions:**
  - Immediately following burial?
    - Incumbent's discretion (reasonable period of up to 6 months).
  - No artificial flowers.
    - Incumbent's discretion (Rabbits; Christmas wreaths; remembrance poppies).
- **Removals:**
  - Incumbent should request that the family members remove items;
  - PCC's maintenance responsibilities: PCC should take reasonable steps to notify family prior to removal of items likely to be sensitive.



# Ownership and maintenance of monuments

- Monuments remain **private property**.
  - Owned initially by the **person who commissioned** and paid for it.
  - After that person's death, owned by the **heirs of the deceased person** commemorated by the monument.
- The **owner** is primarily **responsible for maintaining** in a safe condition.
- The **PCC likely has an obligation too**, as part of its general duty to maintain churchyards.

# Maintenance of churchyards generally

- The maintenance of churchyards is a **duty belonging to the PCC**, and should be part of quinquennial inspections.
- Canon F13 requires churchyards to be *“duly fenced”* and *“kept in such an orderly and decent manner as becomes consecrated ground”*.
- PCCs are also required to **maintain trees** growing on churchyards.
- The maintenance duties of PCCs are likely to confer **liability for personal injury claims** under the Occupiers Liability Acts – check that insurance coverage is in place and terms are obeyed.

# Maintenance of closed churchyards

- The PCC **remains liable** for the maintenance of churchyards after they have been **closed**.
- However, that maintenance responsibility **may** be handed over to the **local civil parish or district council**.
- Transferring maintenance responsibility does not affect the **ownership** of the churchyard or its **consecrated status**.

# Exhumation

- Exhumation from consecrated land **always requires a faculty** – this replaces the secular exhumation licence that would otherwise be needed.
- A faculty is required for all disturbance of human remains, including 'temporary' exhumation.
- Exhumation faculties are awarded only in **exceptional circumstances** – the norm is that Christian burial is permanent.
- Family members seeking an exhumation faculty should be asked to speak directly to the registry.

# Filming in churchyards

- Commercial filming may present a useful source of income.
- An '**additional matters order**' is available to reduce the need for faculties – filming is authorized if the archdeacon approves the script and the registrar approves the contract.
- A **faculty** is required if any **changes are made to the churchyard**, such as the mock digging of a 'grave'.



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