

## **Churchyard Regulations (2006) and Further Guidelines**

The Churchyard Regulations are put in place by the Diocesan Chancellor, in consultation with the Diocesan Advisory Committee for the care of churches (DAC), as required by Section 6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

[UK Legislation: Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#)

A shorter Faculty petition form for works to churchyard trees can be found here:

[Diocese of Birmingham: Faculty Petition Form \(Trees\)](#)

### **Trees in Churchyards**

#### **T1. General**

T1.1 Every Parochial Church Council (PCC) has the responsibility, under Civil and Ecclesiastical Law, for caring for all the trees in a churchyard that is open for burials. Damage to persons or property caused by trees may give rise to claims for damages if trees are not properly inspected and cared for. It is essential, therefore, for PCCs to seek and follow expert advice about the planting, felling, lopping, topping and pruning of trees in churchyards.

#### **T2. Town and Country Planning Act 1990**

[UK Legislation: Town and Country Planning Act 1990](#)

T2.1 Where any tree is subject to a Tree Preservation Order, made under Section 198 of this Act, or is in a Conservation Area in respect of which no Tree Preservation Order is for the time being in force, restrictions are imposed by the Act upon cutting down, topping, lopping and other acts to the tree in question (see Sections 198 and 211). These restrictions do not apply where the tree is dying, dead or has become dangerous (Section 198(6a)). In any other case the consent of the Local Planning Authority will have to be obtained before anything is done to the tree.

T2.2 The PCC should always be aware which of its streets come within the ambit of the 1990 Act.

T2.3 In addition to Local Authority planning consent, permission may also be required from the Archdeacon, or by way of Faculty from the Chancellor, for work to be done to trees, which come within the terms of the Act.

#### **T3. Expert advice**

T3.1 Many Local Planning Authorities employ an Arboricultural Officer who should be able to give advice about tree safety and the type of tree maintenance required.

T3.2 An arboricultural consultant is an independent person with special experience in the assessment and care of trees and able to give advice on what work should be undertaken. A report from such a consultant would be evidence that a PCC had acted in a responsible manner, as expected by law and required by insurance companies. Consultants do, of course, charge for their advisory work.

T3.3 An arboricultural contractor, often known as a tree surgeon, will undertake work recommended by a consultant or on the basis of their own recommendations.

T3.4 It is very important that advice sought and given, and work done, should be of proper quality. There is ample evidence to show how trees can be severely damaged under the guise of 'pruning' when executed without appropriate knowledge or skill. The PCC can approach either the Diocesan Advisory Committee for the care of churches (DAC) or the Directory of Arboricultural Consultants and Contractors. The Directory is maintained by the Arboricultural Association, which is a Registered Charity. Listing in the Directory is an assurance of competence.

#### **T4. Inspection of trees**

T4.1 The need for full and regular inspection of trees increases with their age. Expert advice should be obtained about the necessary frequency of inspections.

T4.2 Any tree subject to a Tree Preservation Order must be inspected by the person carrying out the Quinquennial Inspection (QI) of the church under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. The inspecting architect or surveyor should therefore be informed about all Tree Preservation Orders applying to trees in the churchyard and any concern expressed in the report should be referred to an appropriate expert.

#### **T5. Planting trees**

T5.1 The PCC should seek expert advice about the suitability of any proposed species of tree before planting and also the suitability of the proposed location.

T5.2 The consent of the Archdeacon should be obtained before any planting is done, but where a scheme of planting is proposed, the advice of the DAC and a Faculty from the Chancellor will be required.

#### **T6. Felling trees**

T6.1 Where expert advice has been received that a tree should be felled because it is diseased or for safety reasons, a copy of the written advice should be sent to the Archdeacon for his authorisation for such felling.

T6.2 Where it is desired to fell a sound tree occupying space that the PCC wishes to use for some other purpose, the advice of the DAC and a Faculty from the Chancellor must be obtained.

#### **T7. Lopping and topping trees**

T7.1 Standard remedial work, such as the removal of split and hanging limbs or major deadwood, may be carried out by any arboricultural contractor mentioned in the Directory of the Arboricultural Association or approved by the DAC.

T7.2 Other works of tree surgery, such as cable bracing, crown reduction and removal of major limbs must be recommended in a written report by an expert. The report must be sent to the Archdeacon, who may authorise the work or refer the matter to the DAC and the Chancellor.

## **T8. Keeping of records**

T8.1 The PCC should keep a written record of the planting of, and work on, all trees in the churchyard. Where appropriate, photographs should be included.

## **Burials, Internments and Monuments in Churchyards**

### **B1. Overriding objective**

B1.1 The purpose of these Regulations is to ensure that churchyards are kept in decent order so as to show respect for those who have died before us and to comfort so far as is possible all those who have loved ones buried there. Churchyards reflect the sure and certain hope that those buried or whose ashes are interred await the return of Jesus Christ and the life that is to come. Churchyards reflect too the Christian faith of those who have permanently committed their friends and/or family to God. It is especially important that each and every person with a loved one buried/interred in a churchyard seeks to have regard to the sensitivities of others in the same position and of other visitors to the church and/or its churchyard and to respect the tradition of the churchyard itself.

B1.2 Incumbents must not under any circumstances authorise the breach of these Regulations without reference to the Chancellor for his approval.

### **B2. Rights of Burial and reservation of grave-space**

B2.1 Parishioners, those on the electoral roll of the parish concerned and all persons dying within the parish boundaries have a Right of Burial within the parish churchyard provided that it is still open for burials, whether or not the deceased was a practising Christian and regardless of the length of time that the deceased lived in the parish.

B2.2 Permission for burial of other persons may be granted by the incumbent and the PCC which by Resolution should normally give a general consent to the incumbent to give such permission at his or her discretion.

B2.3 No one has a right to be buried in a particular part of a churchyard, but grave spaces may be reserved by Faculty.

B2.4 It is important to note that the exercise of a Right of Burial, the reservation of a grave space or the erection of a monument does not confer any right of ownership of that part of the churchyard, the whole of which remains vested in the incumbent. In particular, burial (or

interment of ashes) does not give the bereaved a right to have a memorial erected that is contrary to these Regulations.

### **B3. Erection of monuments**

B3.1 No monument may be erected over a grave until at least 6 months have passed since the interment save that the incumbent may permit an exception in the case of the death of a minor provided that he first consults the Archdeacon.

B3.2 Neither the relatives, nor the personal representatives, nor the close friends of the deceased have the right to have a monument erected over a grave. They may apply for the privilege of so doing to the incumbent who has discretion to permit such a monument if and only if the application complies with the Regulations below.

B3.3 Applicants are reminded that a churchyard is consecrated ground and that any memorial/monument will be seen by others visiting. Therefore those completing the application should seek to have erected nothing that will cause offence to others or that will be contrary to traditional Christian teaching; nor should any memorial impliedly or otherwise draw an unfavourable comparison with anyone else. Accordingly, applicants must discuss their proposals with the incumbent before making formal application.

B3.4 Any application to erect a monument shall be made to the incumbent on Form A [which can be obtained from the Diocesan Registry], but only following the discussions with the incumbent referred to in 3.3, above.

B3.5 Once a memorial has been erected on the grave the relatives or personal representatives remain responsible for maintaining it. Neither the incumbent nor the PCC has any responsibility at any time for the upkeep of individual memorials. As a result, applicants are advised to choose monuments that are not expensive to maintain and that are not especially susceptible to vandalism.

B3.6 All changes in a churchyard, including the erecting or removal of monuments, require the authority of the Chancellor, who by custom delegates to the incumbent (save where he/she specifically directs otherwise) authority to permit the introduction of monuments that come within the limits set out in Regulation B4, below.

B3.7 No order should be placed with a stone or monumental mason unless the order has been approved in writing by the incumbent or by the Chancellor.

B3.8 Grave mounds are not permitted irrespective of whether or not a memorial has been placed or is going to be placed over the grave.

### **B4. Incumbent's authority to permit monuments**

Provided he/she keeps a written record of the same, an incumbent may give written permission for the erection of a monument on a grave in the following circumstances:

B4.1 The monument must be in the shape of an upright headstone or of a book, which is basically rectangular in shape, but the top edge should be flat, or in the shape of a cross. There must not be a sculptured figure protruding from the top of the headstone.

B4.2 The headstone or cross may be no larger than 1.25x0.65x0.11m and no smaller than 0.60x0.50x0.08m.

B4.3 The rectangular flat slab may be no larger than the grave itself and must lie flush with the ground. It must be carefully installed.

B4.4 The headstone or cross may stand on a stone base provided the base is an integral part of the design and does not project more than 0.11m in any direction beyond the upright stone, unless a vase hole is included when the front projection may be extended to 0.18m in front of the stone.

B4.5 The upright stone, or base if used, is fixed onto a foundation slab which must extend 0.08m to 0.15m beyond the stone or base in every direction and lies flush with the ground (not the grass) so as to allow a grass cutter to pass freely over it.

B4.6 The headstone, cross or slab is made of unpolished natural stone sympathetic to the fabric of the church, or of English oak.

B4.7 Generally, the inscription is in words and numbers only and is incised without any colouring, gilding or silvering. The inscription must include the full names of the person or persons buried with dates or years of birth and death. The incumbent may permit additional words provided that:

- a) they are not tactless or inapt;
- b) they are consistent with Christian scripture, teaching and doctrine;
- c) they do not intentionally, impliedly or otherwise draw a comparison of any sort with anyone else buried in the churchyard.

The incumbent may permit the side bearing the inscription to be polished.

B4.8 If it is sought to have an incised carving representing a special aspect of the life of the deceased on the headstone then in addition to the incumbent's agreement specific permission from the Chancellor must be sought. Such a carving must not be inappropriate for a Christian place of burial and must be no larger than 0.15x0.15m.

B4.9 The name of the mason making the monument is not to be on the front of it and if permitted at all by the incumbent (whose permission shall only be granted if he considers the appearance of the name will not be unsightly) should be in words not exceeding 0.02m in height.

## **B5. Limits to incumbent's authority**

B5.1 The incumbent has no authority to permit a memorial or monument that does not comply with the conditions contained in B4 above and in particular the incumbent has no authority to permit:

- a) monuments made of marble or granite (other than unpolished grey granite), artificial stone or plastic and in particular monuments made of black granite or marble.
- b) monuments made of more than one type of stone.

- c) monuments in the shape of hearts, urns or statues depicting humans or otherwise.
- d) monuments with more than one side polished.
- e) monuments with pictures or photographs on them.
- f) kerbing, railings or chippings.
- g) any kind of lighting.

## **B6. Role of the Chancellor**

B6.1 Any memorial that does not come within that permitted by the above Regulations may only be erected with the express written consent of the Chancellor and formal approval must be sought from him. The latter may choose to consult with the Archdeacon, the incumbent or the DAC before deciding whether the application for such a monument shall be made by way of petition for a Faculty. The Chancellor is approachable and sensitive to the stress a bereaved family goes through. Representations by letter can be made (prior to any Faculty application) to the Diocesan Registrar, which will be carefully considered.

## **B7. Interment of cremated remains**

B7.1 Strictly speaking, a Faculty is required for every interment of ashes, but by custom the Chancellor continues to delegate to the incumbent the discretion to inter cremated remains in an open churchyard.

B7.2 A Faculty must be obtained in all cases where it is desired to inter cremated remains in ground no longer open for burials.

B7.3. A Faculty must be obtained for the interment of cremated remains within or below a church; such a Faculty is only granted in exceptional circumstances.

B7.4 If it is desired to inter cremated remains in an urn, that urn should ideally be readily biodegradable, rather than be made of metal, plastic or hardwood.

B7.5 The scattering of ashes in a churchyard is never permitted.

B7.6 Each interment of cremated remains should be recorded in a Book of Remembrance.

B7.7 An incumbent may give written permission for a memorial to be placed in that part of the churchyard reserved for cremated remains provided that it is laid flat with the ground and does not exceed 0.45x0.30m. A proposal for any memorial outside these limits must be referred to the Chancellor.

## **B8. Flowers on graves**

B8.1 Bulbs and small plants may be planted on graves in certain churchyards with the permission of the incumbent who must in any event be consulted before any unusual arrangement is to be made.

B8.2 Cut flowers may be left on a grave, but must be cleared away when they die.

B8.3 No artificial flowers may be placed on a grave except for Remembrance Day poppies which should be removed after a decent interval in consultation with the incumbent.

B8.4 No teddy bears, photographs, balloons or other sentimental items should be left on a grave. If they are they may be removed by the incumbent or churchwardens or their deputy at any time 42 days after interment.

### **B9. Breaches of Regulation**

B9.1 The mere fact that another monument, memorial or any other form of exception in breach of these or earlier regulations has been erected or permitted is not a good reason for allowing another such item that does not comply with these Regulations.

B9.2 If a memorial etc. is erected in breach of these Regulations the Chancellor may order its removal.

### **B10. Role of the Parochial Church Council (PCC)**

B10.1 The PCC is encouraged to pass a Resolution that should be widely known indicating that its members will support the incumbent in not allowing unsuitable monuments and inscriptions in breach of the Chancellor's Regulations.

B10.2 The PCC is encouraged to approve an appropriate booklet for those bereaved setting out in less legalistic form what their rights, duties and responsibilities are.

B10.3 The PCC is encouraged to ensure that the parish has an up to date and carefully preserved Book of Remembrance and graveyard plan showing accurately the position in the churchyard of all burials whether marked with a headstone or not.

### **B11. General**

B11.1 Any application to the Chancellor should be sent to the Diocesan Registrar's Office, No.1 Colmore Square, Birmingham, B4 6AA.

B11.2 These Regulations have been drawn up by the Diocesan Chancellor in consultation with the Deputy Chancellor, the Archdeacons of Aston and of Birmingham, and with the DAC. They are issued with the approval of the Bishop of Birmingham. They shall come into force on 1st October 2006. From that date the previous Regulations shall cease to have effect.

Dated this 21st day of September 2006  
Martin John Cardinal  
Chancellor of the Diocese of Birmingham

## **Further Guidelines**

### **Gravestone and memorial safety**

These guidelines do not form part of the Churchyard Regulations (2006), detailed above. They cover gravestone and memorial safety, when it is appropriate to add memorials, and responsibilities regarding closed churchyards.

The Diocesan Advisory Committee for the care of churches (DAC) has been asked to consider the appropriate safety precautions that should be made known to all parishes where there are gravestones and other memorials in churchyards. Birmingham City Council and Solihull Metropolitan Borough Council have been alerted to the risk in their municipal cemeteries and have undertaken a scheme of inspection and repair where necessary. There has been at least one Consistory Court hearing that has considered this issue.

Experience has shown that there have sometimes been issues regarding parts of memorials, such as railings or other metalwork that may become unsafe or result in jagged edges or potential tripping hazards. There have not been any cases of a gravestone collapsing and causing injury in this Diocese, but it is a potential hazard, especially in large municipal cemeteries where there is a greater likelihood of children playing unsupervised.

As such, the following guidance on good practice is intended to help those responsible for churchyard maintenance to feel confident that they have acted in accordance with the duty of care imposed by statute on the occupiers of premises to which the public may gain access.

#### *1. New memorials*

Most churchyard memorials are single gravestones. These should have one-third of their total length firmly embedded into the ground. Where this is achieved there is little danger that the gravestone will topple over. In the event that any different form of memorial is proposed, a Faculty application will require detailed drawings showing the entire stonework and the appropriate calculations to show that it will not be susceptible to movement as a result of subsidence. The completed structure must be tested by the contractor who installs it or a structural engineer to demonstrate that it will withstand a force of 50kg. In either case, it will be necessary to check the Public Liability Insurance of the individual or firm testing the memorial.

#### *2. Inspection of churchyards*

It is appropriate to carry out an annual check of the memorials in all churchyards to which the public have access. This check should involve an inspection of each memorial so as to consider whether it may present any danger. Loose or decaying parts of larger memorials must be noted and gravestones should be checked to see if they move when hand pressure is applied to them. If any movement is detected, the next step should be to test by one adult kneeling beside the memorial (not in front) and pulling on it as he or she gets to their feet. If the stone does not rock, it can be regarded as reasonably safe, but if it moves significantly then remedial action is required.

There is no need for any of this testing to be carried out by a professional or expert, but it is important that the fact that the check has been conducted should be recorded. The need for any remedial work or indeed the decision to keep a closer watch on any particular memorial should be recorded so that it can be reconsidered in the next annual inspection.

While memorials are being inspected it is appropriate to look for other potential hazards on pathways and to record if there is any need for remedial work.

There has been some controversy as to whether gravestones should be tested using a ‘Topple Tester’, which is a calibrated device capable of recording the effect of imposing on a memorial a lateral force of 30kg to 35kg. In municipal cemeteries this method of testing is widely carried out, but churchyards and their memorials do not necessarily share the same circumstances. The Ecclesiastical Insurance Group (EIG) does not require a test using such a device, as it is not readily available to the average parish and they feel that the simple method of testing described above is sufficient and appropriate for use in the churchyards of this Diocese.

### *3. Urgent remedial work and safety precautions*

In the event that any memorial is found to be unsafe, precautions should be taken without delay. For example, any sharp broken edges or loose masonry should be removed and retained pending remedial work.

In the case of a gravestone that is found to be at risk of collapse, the Archdeacon should be informed. If necessary, a dangerous gravestone should be laid flat on the grave to prevent danger were it to collapse. Remedial work should then be carried out to reinstate the stone in a safe and upright condition.

If appropriate, a dangerous memorial should be identified with signage and cordoned off with tape barriers until it is made safe.

### *4. DAC procedure concerning alterations to memorials in churchyards*

There is no need to apply for a Faculty to inspect memorials, but Faculty is required if alterations are needed. This includes moving any memorial or laying it flat.

If, following an inspection, it is decided to undertake a series of repairs and improvements, one application based on the one inspection report will be appropriate. The application should explain what memorials were considered to be dangerous or in need of repair and what remedial work is proposed.

The application should then state whether it has been possible to trace any family of the deceased. If family can be traced then they should be given the opportunity to make any repair or alteration, which can be included in the application, assuming that there was agreement as to the work required.

### *5. Municipal cemeteries*

These notes are not intended to relate to large municipal cemeteries. The need for precautions to be taken by Local Authorities will be considered by their own management.

Where part of a municipal cemetery is consecrated so that it is subject to Faculty Jurisdiction the Local Authority should be aware that the testing procedure noted at 3 and 4 above will be appropriate.

Where there is unlikely to be local knowledge of the family of the deceased, advertising in the local press may be necessary in an attempt to give family members the chance to carry out repairs to memorials, as this remains their responsibility in perpetuity. A Faculty application involving any major change to a memorial should state what has been done to contact the family of the deceased or to advertise.

Detailed guidance from English Heritage on caring for historic graveyard and cemetery monuments can be found here:

[English Heritage: Caring for Historic Graveyard and Cemetery Monuments](#)

### **Memorialisation in general**

The Diocesan Advisory Committee for the care of churches (DAC) is conscious that relatives and friends will want to commemorate a life soon after a person has died.

It is often better, however, to allow some months to pass before everyone agrees on an appropriate style of memorial (even if it is, say, a piece of stained-glass, a candle stand, or other furnishing inside the church that is desired, rather than a memorial plaque).

The DAC has considered whether a 2-year moratorium is appropriate before new memorials are introduced, but believes that only the particular circumstances of each case will help determine an appropriate ‘pause’ before any works are put in hand.

Nevertheless, it is recommended to wait at least 6 months before applying for permission to make a change or addition to some part of the church fabric or its contents as a gesture of commemoration for someone strongly connected with the church over an extended period of time.

### **Closed churchyards**

A ‘closed churchyard’ is one in which burials no longer take place (apart from in exceptional circumstances), but the churchyard is still open to public access. Maintenance responsibility for such places can often be formally handed over by the Parochial Church Council (PCC) to the Local Authority, but the ownership still remains with the PCC.

Upon closure, an Order in Council is made. This document may be accompanied by a Maintenance Agreement, which would make explicit the aspects for which the Local Authority will be responsible. In general, responsibility is held to cover “...all things attached to the realty which includes tombs, monuments, war memorials, churchyard crosses and its walls and fences”.

Closures since the early 1970s have been made under the Local Government Act 1972. Under Section 215 of the Act, keeping the churchyard in “decent order” is held to include dealing with “saplings and bushes ... long rank grass, weeds and brambles”.

[UK Legislation: Local Government Act 1972](#)

The Diocesan Registrar confirmed in Mar-07 that responsibility for trees in churchyards closed by an Order now rests with the Local Authority, explained in Section 13 of the Church of England (Misc. Provisions) Measure 1995.

[UK Legislation: Church of England \(Miscellaneous Provisions\) Measure 1995](#)