

This document is not intended to give full details on everything relating to the management of churchyards but should provide Churchwardens, Incumbents and PCC members with enough information to understand their responsibilities.

## What is a churchyard?

A churchyard is not necessarily the whole of the enclosed area around the church, although in many cases it is. A churchyard is the area of land that has been consecrated for burials. Other land is known as unconsecrated curtilage. Both however are under faculty jurisdiction and therefore may require a faculty for any work carried out.

## Who is responsible for the maintenance?

The PCC has under Canon F13, responsibility for the maintenance of the churchyard which includes paths, walls, grass and trees, however we will look at trees separately. It is important to note that memorials do not belong to the PCC and legally it is the responsibility of the family of the deceased to maintain them.

The PCC is however under the '1957 Occupiers Liability Act' responsible for making sure that the churchyard and/or curtilage of the church is safe and if it is not possible to contact the family of the memorial then the PCC must ensure that it is maintained and kept safe.

## Can I pass responsibility for maintenance to the Local Authority?

Under the 'Local Government Act 1972 section 215' a parish that has a "closed" churchyard can pass responsibility to the Local Authority for the maintenance. This does not transfer ownership of the churchyard to Local Authority and whilst they are responsible for the maintenance and therefore the safety of the churchyard, the parish still has a legal interest in the churchyard and must pass on any safety concerns to the LA as soon as they become aware of them.

It is important to note that the standard of maintenance is not defined and therefore the maintenance provided by the LA may not match the expectations of the PCC and wider community.

## How do we close our churchyard?

A churchyard can be closed when there is no longer any space left for burials to take place. This can be because every space is taken or because any remaining land is unsuitable for burials due to ground conditions. The decision for closure is made by the Ministry of Justice and full details of the closure process can be obtained from them [Apply to close a churchyard - GOV.UK \(www.gov.uk\)](https://www.gov.uk), however in simple terms the process is as follows.

- PCC passes a resolution to declare that the churchyard is disused.
- Application form is obtained from the Ministry of Justice and the completed form returned to them.
- The Ministry of Justice consults with the Local Authority.
- Closure notice is issued.

## Churchyard Memorials

In a churchyard the incumbent can authorise the installation of a memorial stone that is in-line with the Durham Diocesan Churchyard rules without any further authority being required.

If the applicant wishes to install a monument that does not comply with the churchyard rules, then a faculty is required and the applicant should apply for this directly to the Diocesan Registry.

Replacement memorials and repairs to memorials will require a faculty as they can raise sensitive issues.

If you have local stonemasons who generally provide memorials for your churchyard it is useful to regularly remind them of the churchyard rules so that they can guide applicants towards appropriate memorials.

### Removal of unauthorised items from the churchyard.

It is becoming more common in churchyards for families to place artificial flowers, toys, lights, plastic fencing, etc. on or around the grave. None of these types of items are allowed under our churchyard rules and PCC's should ensure that users of the churchyard are aware of this and that they are removed.

This however can be a sensitive matter for those involved and it is important that everyone understands the rules before items are removed. I would suggest the following process.

- Notices put up on churchyard gates to inform people of the rules and what is allowed to be placed on grave.
- Perhaps individual notes placed on graves confirming when items will be removed. Give sufficient notice perhaps a couple of months to allow family to have visited the grave and received the information.
- Following removal of the items arrange for them to be stored for a short period to allow the family to collect them if they wish.
- A faculty can be applied for to remove illegal items if it becomes contentious.

### Interment of Ashes

Ashes can be interred in two possible ways, into an existing grave of a family member or into a garden of remembrance designated by a faculty.

If the churchyard is "Open" then interment of ashes can take place with the authority of the incumbent into a grave.

If a churchyard is "Closed" then a faculty will be required for the interment of ashes into an existing grave and the faculty application should be made to Diocesan Registry.

An area of the churchyard can be set aside as a Garden of Remembrance for the interment of ashes. This is done via a faculty which determines the location and layout of this area and how the burials will be marked. A separate document is available on establishing a Garden of Remembrance. Once this is in place no further faculty permission would be required until the area is full.

### Trees

It is highly likely that your churchyard or unconsecrated curtilage will contain trees and it is important that these are managed well to ensure that they do not cause a problem to paths, graves or neighbouring properties. It is therefore useful for the PCC to develop a tree management plan for the church to ensure that these are managed on a rolling programme to avoid significant one-off costs.

Many churchyards are in conservation areas and many have trees which have tree protection orders (TPO's) on them. This information can be obtained from your local authority planning department who will also need to be consulted prior to any tree work being carried out.

Some minor work can be carried out under "List A" but most work will fall under "List B" and will therefore require permission from your Archdeacon. On occasions a faculty may be required for the work.

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**May 2024**