

## DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

### Closure of Church Of England Churchyards to Further Burials

1. These notes provide guidance on applications for Orders made by Her Majesty in Council, under Section 1 of the Burial Act 1853, in response to representations by the Secretary of State for the Department for Constitutional Affairs. The effect of an Order is to require the discontinuance of burials in a particular churchyard, either entirely or with exceptions – eg to allow further burials in particular vaults or graves.

#### ❖ Applications

2. An application for an Order should be made on the attached form to the Department for Constitutional Affairs, Coroner's Division, Ground Floor, Abbey Orchard House, 4 Abbey Orchard Street, London SW1P 2HT. It is usually made by the incumbent or by the secretary of the parochial church council, and should set out in full the grounds on which an Order is sought. The Department for Constitutional Affairs is not normally prepared to consider applications relating to parts only of churchyards. Churchyards which have been opened with the consent of the Secretary of State under Section 5 of the Burial Act 1853 are not eligible for closure.

#### ❖ Grounds for consideration

3. The Department for Constitutional Affairs will wish to be satisfied that an Order can be sought on at least one of the following grounds:-

- i. There is no proper room for new graves;
- ii. Further burials would be contrary to decency;
- iii. Discontinuance of burials would prevent or mitigate nuisance;
- iv. Further burials would constitute a health risk.

4. A wish to transfer responsibility for maintenance to the local authority is not an acceptable ground for seeking an Order.

#### ❖ Exceptions

5. If the Department for Constitutional Affairs considers there is a prima facie case for making an Order it will ask applicants whether they want the Order to provide for further burials to take place:-

- (a) in existing walled graves or vaults which have room for further interments, provided each coffin is adequately enclosed by brickwork or stonework; or
- (b) in existing family earthen graves which have sufficient space for further interments, provided the top of every coffin is at least one metre below the level of the ground adjoining the grave; or
- (c) in any unused earthen grave space which has been reserved, provided the top of every coffin is at least one metre below the level of the ground adjoining the grave.

#### ❖ Cremated remains

6. It is the Department for Constitutional Affairs view that a closure Order does not prohibit the interment of cremated remains provided that this can be done without disturbing human remains.

## ❖ The Closure Process

7. **Consultation with local authorities** On receipt of the application the Department for Constitutional Affairs will check whether there is any existing Order affecting the churchyard. If there is not, then the Department for Constitutional Affairs will ask the council of the district or London borough and, if there is one, the parish council of the area, whether they have any objection to the proposed closure.

8. **Publicity** – If the local authorities have no objection to the closure the Department for Constitutional Affairs will ask applicants to publish, in a local newspaper, notice of the Secretary of State's intention to apply for an Order in accordance with Section 1 of the Burial Act 1853.

9. **Consideration of objections** – If any objections are received from the local authorities, or from parishioners in response to the advertisement, then the Department for Constitutional Affairs will need to consider whether the application fully meets the grounds for closure. In some cases proposing exceptions, or further exceptions, to the proposed Order where these are acceptable to the applicants and local authorities can satisfy objections.

10. **Notice of intention to apply for an order** – If there are no valid objections, the Department for Constitutional Affairs will in accordance with Section 1 of the Burial Act 1853 give the incumbent and churchwardens ten days' notice of the Secretary of State's intention to apply for an Order.

11. **Consideration by the Privy Council** – After the Privy Council Office has received the Secretary of State's representations it will publish in the London Gazette notice of the date on which Her Majesty in Council has ordered the application to be considered, and will send copies of the notice to the church and local authorities concerned. The church authorities will be required to post the notice on church or chapel doors, or in other conspicuous places in the parish, for at least one month before the date for consideration. If, in due course, a closure Order is made, copies of the Order will subsequently be sent to the church and the local authorities.

12. From receipt of the application until representation is made to the Privy Council the closure process may take at least 12 months.

## ❖ Maintenance of closed churchyards

13. Under Section 215 of the Local Government Act 1972 a parochial church council is liable to maintain a closed churchyard by keeping it in decent order and its walls and fences in good repair. A Parochial Church Council (PCC) may serve a written request on the parish or community council, or if there is not one, the district Council, to take over the maintenance of the churchyard. Where the request is served on the parish council the council have the option of transferring the responsibility for maintenance to the district council provided that they resolve to do so and give written notice of their resolution to the district council and to the PCC within three months of service of the original request, then at the expiration of the three months the district council must take over maintenance.

14. In 1981 the General Synod asked Diocesan synods to advise PCCs with closed churchyards that local authorities should be given 12 months notice of any intention to serve 3 months statutory notice as laid down in Section 215.

15. The condition of a churchyard or the future arrangements for its maintenance are not factors that the Department for Constitutional Affairs takes into consideration when considering whether to apply to the Privy Council for a closure Order.

## ❖ Enquiries

16. Enquiries about these notes may be made to the Coroners Division Tel: 020 7340 6659 or 020 7340 6660.