

# **DIOCESE OF YORK**

## **NOTES OF GUIDANCE by the Registrar of the Diocese**

### **CHURCHYARDS**

#### **A. Closure of Church of England Churchyards to Further Burials**

A churchyard may be closed for burial by Order in Council made under the Burial Act 1853 (sometimes described as discontinuance or closure orders). The effect of an Order closing a churchyard for burials is that there may be no more burials in it unless and except as may be provided by the Order itself. Exceptions may include grave spaces already reserved by faculty, vaults or spaces in family graves not yet full or possibly a clearly defined and designated extension area but such an area would need to be sectioned off in a permanent manner from the churchyard proposed to be closed.

However there may be burial of cremated remains in a closed churchyard: either there may be an area set aside in the churchyard by general faculty for the burial of cremated remains or interments in a family grave on the authority of a particular faculty for that interment.

The Secretary of State for the Environment no longer has responsibility for closure orders. These have passed to the Ministry of Justice. The address (correct as at September 2012) is Coroners, Burials, Cremation and Inquiries Policy Team, Ministry of Justice, 102 Petty France, London SW1H 9AJ. (Tel: 020 3334 2813; Fax: 020 3334 2233; Email: [coroners@justice.gsi.gov.uk](mailto:coroners@justice.gsi.gov.uk); Website: [www.justice.gov.uk](http://www.justice.gov.uk)).

There is attached a copy of the current version of the Ministry of Justice's Application for representations to be made by the Ministry of Justice for an Order in Council to discontinue burials in Church of England churchyards Form and accompanying note entitled Closure of Church of England Churchyards to Further Burials. (This is the text as at September 2012). You are advised to contact the Ministry of Justice before making application to obtain the then current Notes and application form).

In some cases churchyards may not be closed because of Section 5 of the Burial Act 1853. This section extends to any cemetery established under a special, i.e. particular, Act of parliament.

A closure order is "irreversible" so before applying to the Home Office for an order that the churchyard be closed for future burials, the incumbent/priest in charge in consultation with the PCC should be satisfied that there is no possibility that the churchyard or part of it will be needed for burials in the future. Such consideration should include the possibility of a scheme to re-order the churchyard of its existing memorials or kerbstones or some of them to make space for new burials in an area in which there have been previous burials.

Where the PCC is prompted to consider applying for a discontinuance order because it then wishes to use Section 215 of the Local Government Act 1972 and is anxious to seek assistance with the maintenance of a churchyard from the local authority which is perhaps almost full or rarely used for new burials, discussion or negotiation with the local authority may achieve the result of the local authority agreeing to contribute in some way to maintenance e.g. cutting the grass, or paying a sum for this etc. In approaching the matter this way, an application to the Ministry of Justice for a discontinuance order will not be made prematurely (when in fact there is space) or precipitately (when a re-ordering scheme may enable the churchyard to remain in use as a burial ground) or mistakenly (when it is thought the churchyard is full and there is no space for any future burials, but this is not strictly the case). Another matter is whether the churchyard is really completely full. Where a churchyard has been closed, but later an area is identified where there can be several burial plots, then it is "too late" to use them – the churchyard is closed for burials and these spare plots cannot be used.

## **B. Transfer of Maintenance Responsibilities to Local Authority**

Maintenance responsibility for a churchyard closed for burials may be transferred to a local authority under section 215 of the Local Government Act 1972. Briefly the P.C.C. formally requests the local authority to take over the maintenance of a closed churchyard at three months notice.

It has been arranged with the Local Authorities Association that in practice there should be twelve months informal notice given to the local authority of an intention to serve a three month statutory notice.

The effect of acting under section 215 of the 1972 Act is to assign the function and liabilities of the P.C.C. with respect to the maintenance and repair of the churchyard to the local authority. This does not mean that the ownership or freehold in the churchyard is transferred, nor any function or liabilities except those with respect to maintenance and repair. Thus the freehold of the churchyard remains vested in the incumbent, and the churchyard remains subject to faculty jurisdiction. The layout of a churchyard including paths and entrances, re-surfacing of paths, new works such as gates or walls or notice boards, planting of trees and tree work other than routine pruning etc, may not be undertaken without faculty. Work which falls within the List of Matters Not Requiring a Faculty (the de minimis list) authorised by the Chancellor may be undertaken without a Faculty: a copy of the current List is available on the Registry website or on request from the Registry or DAC Office.

The churchwardens continue to have a duty to maintain order and decency in a closed churchyard.

## **C. Generally**

A closure Order, a faculty setting aside an area in a closed churchyard for burial of cremated remains, a notice under section 215 or any agreement with a local authority concerning the maintenance of a churchyard needs to be recorded in the terrier or church property register.

It would be helpful if you would send a letter to the Registry for its records notifying the progress of any of these matters and the date of any closure order and the date it comes into force, any notice under Section 215 given to the local authority, the effective date of transfer of maintenance to the local authority, together with the name of the churchyard or churchyard extension and its precise location.

It would also be appreciated if you could send to the Registry a copy of the Order in Council closing the churchyard and a copy of the notice under Section 215 given to the local authority.

A useful publication on these and other matters concerning churchyards is "Responsible Care for Churchyards: a brief practical guide for parishes" (ISBN No: 0715175645) published by Church House Publishing for the Council for the Care of Churches and available from Church House Bookshop, Great Smith Street, London SW1P 3BN. (Website: [www.chbookshop.co.uk](http://www.chbookshop.co.uk): Tel: 020 7799 4064: Fax: 020 7340 9997 Email: [bookshop@chbookshop.co.uk](mailto:bookshop@chbookshop.co.uk): £1.25 as at 09/10).

York DAC Office: The Secretary, York DAC, Diocesan House, Aviator Court, Clifton Moor, York, YO30 4WJ.

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DIOCESAN REGISTRAR**

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# Ministry of JUSTICE

| For office use only |     |    |
|---------------------|-----|----|
|                     | Yes | No |
| OiC                 |     |    |
| OwA                 |     |    |

**Application for representations to be made by the Ministry of Justice for an Order  
in Council to discontinue burials in Church of England churchyards  
(Section 1 Burial Act 1853)**

**Please read the attached guidance notes and then complete  
the form in BLOCK CAPITALS**

## Part A – Churchyard Details

|    |  |
|----|--|
| 1. | Name and address of PCC Secretary:<br><br>_____<br><br>_____<br><br>_____<br><br>Post code: _____<br><br>Daytime telephone number: _____<br><br>Email address: _____<br><br>Fax number: _____  |
| 2. | Name and address of churchyard or burial ground:<br><br>_____<br><br>_____<br><br>_____<br><br>Post code: _____<br><br><b>Please provide <u>two</u> A4 maps of the burial ground (scale 1:1250), one clearly showing the boundaries of the area to be closed and any area already closed or NOT to be closed, and one unmarked copy.</b> |
| 3. | Name of the relevant Diocese and address of the Diocesan Registry:<br><br>_____<br><br>_____<br><br>_____<br><br>_____<br><br>Postcode _____   |

4. Please state grounds for closure (please ✓ as appropriate):

a) There is no proper room for new graves.

b) Further burials would be contrary to decency.

c) Discontinuance of burials would prevent or mitigate a nuisance

d) Further burials would constitute a health risk

e) Other

If a) ONLY then please go to Q.5. If any of b) – e) please provide in a covering letter further information as to why burials should be discontinued. Then please go to Q.11.

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5. Date of last burial in a new grave:

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6. If you have any unused grave spaces not reserved by faculty please state:

how many:  how long you estimate it will be before they are used:

---

7. If you have any grave spaces reserved by faculty please state:

how many:

---

8. Any Order to discontinue burials in a churchyard on the grounds that it is full will be made subject to exceptions allowing further burials in existing reserved grave spaces, vaults, walled graves or earthen graves provided they have sufficient room.

If you do **not** wish to have such exceptions made in the Order please ✓ as appropriate:

Discontinue burial in grave spaces reserved by faculty

Discontinue burial in vaults and walled graves

Discontinue burial in existing family, earthen graves

---

9. Is the Parochial Church Council responsible for any other churchyards? (please ✓ one of the boxes)

Yes  Go to Q10

No  Go to Q11

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10. If there are other churchyards please state how many unused or unreserved grave spaces there are in total.

11. Name of the Civil Parish (if applicable):

\_\_\_\_\_

Name and address of the Clerk or Chair of the Parish Council or Parish Meeting or Town Council:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post code: \_\_\_\_\_

Daytime telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

12. Contact details for the District Council, London Borough, Metropolitan District or unitary authority in whose area the burial ground lies:

Name: \_\_\_\_\_

Department: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Post code: \_\_\_\_\_

Daytime telephone number: \_\_\_\_\_

Email address: \_\_\_\_\_

13. Signed (secretary of the PCC)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please now complete Parts B or C (depending on whether you wish to transfer the maintenance responsibility) and send the appropriate forms with a covering letter to the relevant local authorities.**

Before submitting your application to the Ministry of Justice please ensure that all necessary boxes on this form have been completed, and the following documentation is attached:

- A copy of the resolution of the PCC to close the churchyard.
- Two appropriate maps of the burial ground in 1:1250 scale.
- Part B forms completed by the local authorities (if a request to transfer maintenance responsibility is to be made in due course).
- Part C forms completed by the local authorities (if there are no plans to request the transfer of maintenance responsibility in the immediate future).

Then send the application to:

Coroners and Burials Division  
Ministry of Justice  
102 Petty France  
London, SW1H 9AJ

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**Part B(i)**  
**Notice of intention to apply to transfer maintenance responsibility**  
(To be sent to the appropriate Town / Parish council or parish meeting)

In the event that an Order in Council is made to discontinue burials in

\_\_\_\_\_ churchyard,  
\_\_\_\_\_ Parochial Church Council

hereby gives notice of its intention to request

\_\_\_\_\_ Town / Parish council or parish

meeting (*delete as applicable*) to take over maintenance responsibility for the churchyard in accordance with the provisions of section 215 of the Local Government Act 1972.

Signed (Secretary of PCC): \_\_\_\_\_ Date: \_\_\_\_\_

**B1** The grounds for closure\* are (PCC to ✓ as appropriate):

- |   |                          |
|---|--------------------------|
| a) There is no proper room for new graves.                      | <input type="checkbox"/> |
| b) Further burials would be contrary to decency.                | <input type="checkbox"/> |
| c) Discontinuance of burials would prevent or mitigate nuisance | <input type="checkbox"/> |
| d) Further burials would constitute a health risk               | <input type="checkbox"/> |
| e) Other  | <input type="checkbox"/> |

Additional information regarding the reasons for discontinuing burials is / is not attached

\* Grounds (a) to (d) have been agreed by the Ministry of Justice, Church of England and local government representative organisations as potential grounds for justifying closure.

**B2** The churchyard contains (PCC to ✓ as appropriate):

- |   |                          |
|---|--------------------------|
| war graves  | <input type="checkbox"/> |
| earth graves with space for the burial of additional family members | <input type="checkbox"/> |
| vaults/walled graves with space for additional burials              | <input type="checkbox"/> |
| graves reserved by faculty  | <input type="checkbox"/> |

B3 The overall condition of the churchyard is:

**NB:** Please use one of the definitions provided below.

Further information covering the churchyard's pathways, walls and fences, memorials and trees is set out in the attached document.

B4 Does the Council / chairman of the parish meeting have any objections to the closure of the burial ground, on the grounds given above at B1:

Yes

No

The council / chairman of the parish meeting should now return this form to the Parochial Church Council explaining, if necessary, why it is considered that the burial ground should not be closed under the grounds given at B1

Definitions for overall churchyard condition for Question B3.

|      |  |
|------|--|
| Good | The churchyard is in an acceptable condition for the maintenance responsibility to be transferred. The trees, walls and fences are in a reasonable state of repair, and the monuments have been assessed for safety within the last 2 years.   |
| Fair | The churchyard and/or the trees, walls and fences require some attention, but no major work, restoration or clearance. For example the trees might need trimming, some repairs might be required to the walls or fences, and/or the memorials may not have been assessed recently or are known to include some which need to be made safe. |
| Poor | The churchyard requires capital investment or essential repairs or restoration work.   |



Part B(ii)  
**Notice of intention to apply to transfer maintenance responsibility**  
(To be sent to the appropriate District council)

In the event that an Order in Council is made to discontinue burials in

\_\_\_\_\_ churchyard,  
\_\_\_\_\_ Parochial Church Council

hereby gives notice of its intention to request

\_\_\_\_\_ Town / Parish council or parish

meeting (*delete as applicable*) to take over maintenance responsibility for the churchyard in accordance with the provisions of section 215 of the Local Government Act 1972

This is being brought to your attention as under s.215(3), if a request to take on the maintenance of a closed churchyard is served on a parish or community council or the chairman of a parish meeting they may decide, within three months of that notice, to give written notice to the council of the district of their intention to pass on the responsibility to that council.

Signed (Secretary of PCC): \_\_\_\_\_ Date: \_\_\_\_\_

B1 The grounds for closure\* are because (PCC to ✓ as appropriate):

- |   |                          |
|---|--------------------------|
| a) There is no proper room for new graves.                      | <input type="checkbox"/> |
| b) Further burials would be contrary to decency.                | <input type="checkbox"/> |
| c) Discontinuance of burials would prevent or mitigate nuisance | <input type="checkbox"/> |
| d) Further burials would constitute a health risk               | <input type="checkbox"/> |
| e) Other  | <input type="checkbox"/> |

Additional information regarding the reasons for discontinuing burials is / is not attached

\* Grounds (a) to (d) have been agreed by the Ministry of Justice, Church of England and local government representative organisations as potential grounds for justifying closure.

B2 The churchyard contains (PCC to ✓ as appropriate):

- |   |                          |
|---|--------------------------|
| war graves  | <input type="checkbox"/> |
| earth graves with space for the burial of additional family members | <input type="checkbox"/> |
| vaults/walled graves with space for additional burials              | <input type="checkbox"/> |
| graves reserved by faculty  | <input type="checkbox"/> |

B3 The overall condition of the churchyard is:

**NB:** Please use one of the definitions provided below.

Further information covering the churchyard's pathways, walls and fences, memorials and trees is set out in the attached document.

B4 Does the Council have any objections to the closure of the burial ground, on the grounds given above at B1:

Yes

No

Please now return this form to the Parochial Church Council explaining, if necessary, why it is considered that the burial ground should not be closed under the grounds at B1.

Definitions for overall churchyard condition for Question B3.

|      |  |
|------|--|
| Good | The churchyard is in an acceptable condition for the maintenance responsibility to be transferred now. The trees, walls and fences are in a reasonable state of repair, and the monuments have been assessed for safety within the last 2 years.   |
| Fair | The churchyard and/or the trees, walls and fences require some attention, but no major work, restoration or clearance. For example the trees might need trimming, some repairs might be required to the walls or fences, and/or the memorials may not have been assessed recently or are known to include some which need to be made safe. |
| Poor | The churchyard requires capital investment or essential repairs or restoration work.   |

Part C(i)  
**Notice of intention to apply for a closure Order**

**Maintenance responsibility to be retained by PCC**  
(To be sent to the appropriate Town / Parish council or parish meeting)

The \_\_\_\_\_ Parochial Church Council has  
applied to the Ministry of Justice to discontinue burials in  
\_\_\_\_\_ churchyard,

This is being brought to your attention as the local authority responsible for the area in which the churchyard is located.

Should a closure Order be granted, the PCC intends to retain the maintenance responsibility for the churchyard and has no current plans to transfer it to the local authority.

The PCC is fully aware that should it wish to transfer maintenance at some future date, local authorities have asked that they be given at least twelve months notice of this.

Signed (Secretary of PCC): \_\_\_\_\_ Date: \_\_\_\_\_

C1 The grounds for closure\* are because (PCC to ✓ as appropriate)::

- |   |                          |
|---|--------------------------|
| a) There is no proper room for new graves.                      | <input type="checkbox"/> |
| b) Further burials would be contrary to decency.                | <input type="checkbox"/> |
| c) Discontinuance of burials would prevent or mitigate nuisance | <input type="checkbox"/> |
| d) Further burials would constitute a health risk               | <input type="checkbox"/> |
| e) Other  | <input type="checkbox"/> |

Additional information regarding the reasons for discontinuing burials is / is not attached

\* Grounds (a) to (d) have been agreed by the Ministry of Justice, Church of England and local government representative organisations as potential grounds for justifying closure.

C2 Does the Council / chairman of the parish meeting have any objections to the closure of the burial ground, on the grounds given above at C1:

Yes

No

Please now return this form to the Parochial Church Council explaining, if necessary, why it is considered that the burial ground should not be closed under the grounds at C1.

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Part C(ii)  
**Notice of intention to apply for a closure Order**

**Maintenance responsibility to be retained by PCC**  
(To be sent to the appropriate District Council)

The \_\_\_\_\_ Parochial Church Council has  
applied to the Ministry of Justice to discontinue burials in  
\_\_\_\_\_ churchyard,

This is being brought to your attention as the district authority responsible for the area in which the churchyard is located.

Should a closure Order be granted, the PCC intends to retain the maintenance responsibility for the churchyard and has no current plans to transfer it to the local authority.

The PCC is fully aware that should it wish to transfer maintenance at some future date, local authorities have asked that they be given at least twelve months notice of this.

Signed (Secretary of PCC): \_\_\_\_\_ Date: \_\_\_\_\_

|  |   |
|--|---|
| <b>C1</b>  | The grounds for closure* are because (PCC to ✓ as appropriate):   |
| a) There is no proper room for new graves.   | <input type="checkbox"/>  |
| b) Further burials would be contrary to decency.   | <input type="checkbox"/>  |
| c) Discontinuance of burials would prevent or mitigate nuisance  | <input type="checkbox"/>  |
| d) Further burials would constitute a health risk  | <input type="checkbox"/>  |
| e) Other   | <input type="checkbox"/>  |
| Additional information regarding the reasons for discontinuing burials is / is not attached  |   |
| * Grounds (a) to (d) have been agreed by the Ministry of Justice, Church of England and local government representative organisations as potential grounds for justifying closure. |   |
| <b>C2</b>  | Does the Council have any objections to the closure of the burial ground, on the grounds given above at C1: |
| Yes <input type="checkbox"/>   | No <input type="checkbox"/>   |

Please now return this form to the Parochial Church Council explaining, if necessary, why it is considered that the burial ground should not be closed under the grounds at C1.

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# Ministry of **JUSTICE**

## **CLOSURE OF CHURCH OF ENGLAND CHURCHYARDS TO FURTHER BURIALS**

1. These notes provide guidance to applicants wishing to close formally a Church of England churchyard to further burials by Order in Council under the provisions of section 1 of the Burial Act 1853. Orders to discontinue burials may be required where burial in the churchyard is no longer appropriate and the common law or statutory rights of burial in the parish churchyard need to be extinguished. A statutory process for discontinuing burials in non-Church of England churchyards is not required as such burial rights do not apply.
2. The procedure and guidance notes have been agreed with the Church of England, the Local Government Association, the National Association of Local Councils and the Society of Local Council Clerks.

### **GROUND FOR CONSIDERATION**

3. It has been agreed that an Order may be sought where one or more of the following circumstances pertain:
  - there is no usable space for new graves;
  - further burials would be contrary to decency;
  - discontinuance of burials would prevent or mitigate nuisance;
  - further burials would constitute a health risk.
4. The first of these grounds applies where the churchyard is full, and there is no further usable land where graves could reasonably be made (e.g. areas where the land is too steep, waterlogged or has insufficient depth to be used, or where use would unreasonably encroach on or interfere with existing buildings, paths or other structures). Closure on these grounds need not prevent burials in existing graves which have sufficient room. Where the other grounds for closure apply, which will be rare, it would be likely to be necessary to cease burials in the churchyard altogether even if there is room for new graves or still some space in existing graves
5. Orders are not normally made to close part of a churchyard on the grounds that it is full. This is because any burial rights could and should continue to be exercised in any remaining open part of the churchyard or in any other open church burial grounds in the parish in which relevant parishioners have rights of burial and which have space for further interments. However, where part of a churchyard has already been closed by Order, applications will be considered for the closure of the remainder of the site.
6. In some cases it may not be possible to close a churchyard, or part of it, for legal reasons (for example, where the burial ground was opened with the approval of the Secretary of State - a former requirement in certain circumstances). Consideration is being given to an amendment to the legislation to address this issue.
7. Applications for Orders will not be considered if made only to enable responsibility for maintenance to be transferred to the local authority. If financial support is needed to maintain a burial ground (of any kind), local authorities already have discretionary powers to provide such support.

## Exceptions

8. A churchyard will be considered eligible for an Order in Council on the grounds that it is full if there is no space for new graves. By default, provision will be made for burial to continue to be allowed:

- in existing walled graves or vaults which have room for further interments, provided each coffin is adequately enclosed by brickwork or stonework;
- in existing family earthen graves which have sufficient space for further interments of family members, provided the top of no coffin is less than one metre below the level of the ground adjoining the grave;
- in any unused earthen grave space which has been reserved by faculty, provided the top of no coffin is less than one metre below the level of the ground adjoining the grave.

unless the parochial church council requests burial to be discontinued in such graves or spaces.

9. All of these exceptions will therefore be included in the order unless the appropriate box on the application form is ticked to indicate the graves are not to be included.

10. If, unusually, a parochial church council considers that other exceptions to a closure order should apply, a request to this effect, with reasons, should be submitted with the application.

## Cremated Remains

11. The closure of a churchyard under the Burial Act 1853 is understood not to prevent the interment of cremated remains, but such interments require a faculty and if existing interments are likely to be disturbed could also require a Ministry of Justice licence.

## Condition of the Churchyard

12. Unless the churchyard is closed and the maintenance responsibility has been transferred to the local authority, it is the legal responsibility of the parochial church council to maintain the grounds, and walls and fences, in decent order. Further details can be found in "Responsible Care For Churchyards: A brief practical guide for parishes", available at

<http://www.cofe.anglican.org/about/churchcommissioners/pastoralandclosedchurches/pastoral/churchproperty/careofchurchyards.doc>

13. Although there is provision for this maintenance responsibility to be transferred by the parochial church council to the local authority at any time once the churchyard has been closed by Order, it is considered good practice, and only fair and reasonable, for any parochial church council contemplating such a transfer of responsibility to ensure that the churchyard and its walls and fences are in good condition at the time of the application. If such an application is likely to be made soon after a closure Order has been obtained, it would be helpful for the parochial church council to have identified and carried out any remedial work necessary, including in relation to memorials.

14. Guidance on memorial maintenance can be found in the General Synod Legal Advisory Commission document 'The Maintenance Of Monuments In Closed Churchyards' published in January 2007. This can be found at:

<http://www.cofe.anglican.org/about/churchlawlegis/guidance/monumentmaintenance.rtf>

15. The Ministry of Justice has also published guidance on memorial safety entitled 'Managing the safety of Burial Ground Memorials', and has also produced a set of FAQs on the subject. A



copy of both documents can be gained on application to the address at the bottom of this guidance or by downloading them from:

<http://www.justice.gov.uk/guidance/burials.htm>

## **War Graves**

16. The Commonwealth War Graves Commission (CWGC) is responsible for the care of war graves. Where the Ministry of Justice makes representations to the Privy Council for a closure Order, the CWGC will be advised so that it can take any action it considers necessary in respect of such graves if a change in responsibility for maintenance of the churchyard occurs. In the meantime, where a parochial church council contemplates transferring maintenance responsibility to the local authority on obtaining a closure Order, it would be helpful if details of any war graves could be brought to the attention of the local authority when giving notice of the intention to apply for an Order.

## **THE APPLICATION PROCESS**

17. The decision to apply for closure of the churchyard must first be agreed by the parochial church council, along with whether or not to transfer the responsibility for maintenance, and an appropriate resolution passed.

### **The application form**

18. Applications are requested to be made using the form available from the Ministry of Justice. The form should be completed, in block capitals, by the secretary of the parochial church council, giving all appropriate information.

*Where the parochial church council intends to request transfer of the maintenance responsibility*

19. Local authority representatives have requested that if the parochial church council intends to transfer the maintenance responsibility in the event of the application being successful, the parochial church council should give at least twelve months' notice to enable appropriate budgetary provision to be made.
20. To assist this, both forms at Part B should be completed and sent with a covering letter to the relevant council(s) (i.e. the Town or Parish Council, or the chairman of the parish meeting if there is one, and the council of the district, metropolitan district, London borough or unitary authority, as appropriate). A map of the churchyard (see paragraphs 31 - 32) should be included to make clear the boundaries of the churchyard subject to the application.
21. The covering letter to the council(s) should:
  - explain why a request for a closure Order is being made, bringing to the council's attention the grounds under which the application is being made;
  - explain that the condition of the churchyard is described in order to assist with planning for the provision of maintenance, although the condition does not provide grounds for objecting to the closure;
  - request the council to complete question B4, and if they do not agree with the grounds cited, to explain why;
  - ask for the form to be returned to the parochial church council within a reasonable time once it has been completed (e.g. one month).
22. This early notification of the intention to request transfer of maintenance responsibility (which does not replace the statutory power to request such a transfer after an Order in Council is made) will provide the councils with an opportunity to comment on the proposed grounds for

closure. Before doing so, they may want to satisfy themselves that the churchyard is full, or that there is evidence of the other grounds cited, and may wish to visit the site. Parochial church councils are asked to facilitate any reasonable enquiries from local councils.

23. Early notification of the application will also enable the councils to consider the practical, as well as the budgetary, implications of a transfer of maintenance responsibility. To assist with this, Part B asks the applicant to describe the overall condition of the churchyard using one of the definitions provided. Provision is made for this information to be supplemented with additional detail, such as in respect of the churchyard's pathways, walls and fences, memorials and trees.
24. If in response either of the councils object to the proposed grounds of the application, and the objections cannot be resolved directly between the parochial church council and the local authority councils, it remains open to the parochial church council to pursue the application but in that event it should be submitted to the Ministry of Justice with details of the nature of the objections and the steps taken to seek resolution.
25. Either way, when the Part B forms have been completed and returned to the parochial church council, they should be reattached to Part A and both parts sent to the Ministry of Justice, together with a copy of the resolution of the parochial church council regarding closure, any comments from the local authorities and two copies of a map of the churchyard (see paragraphs 31 - 32 below), ensuring that all the information requested has been provided.
26. The Ministry of Justice will then consider the application. However, where the parochial church council intends to request transfer of maintenance responsibility, the Ministry of Justice will defer the timing of any representations for an Order in Council in order to ensure that the full notice period has elapsed.

*Where the parochial church council intends to retain maintenance responsibility*

27. If the parochial church council intends to retain maintenance responsibility for the churchyard, the forms at Part C should be completed and sent with a covering letter to the relevant council(s) (i.e. the Town or Parish Council, or the chairman of the parish meeting if there is one, and the council of the district, metropolitan district, London borough or unitary authority, as appropriate). A map of the churchyard (see paragraphs 31 - 32) should be included to make clear the boundaries of the churchyard subject to the application.
28. The covering letter to the council(s) should
  - explain why a request for a closure Order is being made, bringing to the council's attention the grounds under which the application is being made;
  - explain that the PCC intend to retain the responsibility for the maintenance of the churchyard themselves;
  - request the council to complete question C2, and if they do not agree with the grounds cited, to explain why;
  - ask for the form to be returned to the parochial church council within a reasonable time once it has been completed (e.g. one month).
29. If in response either of the councils object to the proposed grounds of the application, and the objections cannot be resolved directly between the parochial church council and the local authority councils, it remains open to the parochial church council to pursue the application but in that event it should be submitted to the Ministry of Justice with details of the nature of the objections and the steps taken to seek resolution.
30. Either way, when the Part C forms have been completed and returned to the parochial church council, they should be reattached to Part A and both parts sent to the Ministry of Justice, together with a copy of the resolution of the parochial church council regarding closure, any

comments from the local authorities and two copies of a map of the churchyard, ensuring that all the information requested has been provided. The Ministry of Justice will then consider the application.

## **Maps**

31. Applications should be accompanied by two copies of a map clearly showing the location of the churchyard. The first should be marked with the boundaries of the site to be closed. If, unusually, part only of a churchyard is to be closed (see paragraph 5 above), it would be helpful for the map to show which part of the site is the subject of the application, and the status of the remaining part (or parts) of the churchyard. This would be particularly helpful in cases where a churchyard has been successively enlarged by extensions. It would also be helpful for the map to indicate where there may be an adjacent burial ground (e.g. a parish cemetery). The second copy should be an unmarked copy of the same map.
32. A suitable scale for the Ministry of Justice's purpose is 1:1250. If there are difficulties obtaining such a map, the planning department of the local authority may be able to assist.

## **Consultation with parishioners**

33. If satisfied that the application can properly proceed, the Ministry of Justice will ask the parochial church council informally to bring the proposals to the attention of local parishioners and to invite any comments to be sent direct to the Ministry of Justice within a suitable length of time, not less than one month. It will be open to the parochial church council to decide how best to proceed, but options may include placing a suitable notice in or around the church, in a parish newsletter or website, or in a local newspaper. Whatever option(s) are adopted, the Ministry of Justice will provide suitable wording. The Ministry of Justice should be sent a copy of the advertisement once it has been published, and told when the date for the receipt of comments is to expire.

## **Consideration of objections**

34. Objections or comments may be made either by parishioners or local authorities. They will only be considered valid if they relate to the grounds for closure (for example, there is believed to be space available for new graves, or that further burials will not cause a health hazard or otherwise be undesirable). Where the Ministry of Justice receives any valid objections, the parochial church council is likely to be asked for its comments before any decision is taken.
35. Concerns about the condition of the churchyard or the financial implications of any transfer of maintenance are not issues which are relevant to an application for a closure Order. Any such issues should normally have been raised and considered before an application is made to the Ministry of Justice, and consideration of the application will not normally be deferred pending resolution of such issues.
36. Misunderstandings about the effect of a closure Order sometimes arise and parochial church councils may find it helpful to make clear to parishioners and other local people that burials can usually continue in existing graves or spaces reserved by faculty. Moreover, a closure Order in itself has no effect on public access to the churchyard or the rights and responsibilities of the parochial church council in relation to the churchyard.

## **Notice of intention to apply for an Order**

37. If there are no valid objections, the Ministry of Justice will give the parochial church council at least ten days' notice of the intention to apply to the Privy Council for a closure Order. This is to comply with the requirements of the legislation and to provide a further opportunity for comments or objections.

## **Consideration by the Privy Council**

38. After the Privy Council Office has received the Secretary of State's representations it will publish a notice in the London Gazette of the date on which Her Majesty in Council has ordered the application to be considered. It will send copies of the notice to the parochial church council and local authorities concerned. This notice will need to be posted on the church door and other conspicuous places in the parish for at least one month before the date of consideration.
39. Once a closure Order has been made, copies of the Order will be sent to the church and local authorities by the Privy Council. A copy of the Order will also be sent by the Ministry of Justice to the relevant Diocesan Registry.

## **STATUTORY PROCEDURE FOR THE TRANSFER OF MAINTENANCE**

40. If a parochial church council wishes maintenance responsibility for a churchyard closed by Order in Council to be taken over by the local authority, it will need to serve a written request to this effect on the town or parish council or, if there is none, the district council (or equivalent). It would be helpful for any such request to be accompanied by details regarding the current condition of the churchyard (see paragraphs 19 – 26 above).
41. Where such a request is served on the town or parish council, that council must take over maintenance within three months or must have transferred the request, within that period, to the district council or equivalent, and have notified the parochial church council that it has done so. Once those three months have expired, and the request has been validly served, the district council must take over the responsibility for maintenance.

## **ENQUIRIES**

42. Enquiries about these notes may be made to:

Coroners, Burials, Cremation and Inquiries Policy Team  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ

Tel: 020 3334 2813  
Fax: 020 3334 2233