

CHURCHYARD REGULATIONS 2006

These Regulations are given by the chancellor, in consultation with the Diocesan Advisory Committee, as required by s6(3) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

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Trees in churchyards

T1. General

1.1 Every Parochial Church Council (PCC) has the responsibility, under civil and ecclesiastical law, for caring for all the trees in a churchyard open for burials (that is, not closed by Order). Damage to persons or property, caused by trees, may give rise to claims for damages where trees are not properly cared for or inspected. It is essential, therefore, for parochial church councils to seek and follow expert advice about the planting, felling, lopping and topping and pruning of trees in churchyards.



T2. Town and Country Planning Act 1990

2.1 Where any tree is subject to a tree preservation order, made under §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 §§198 and 211). These restrictions do not apply where the tree is dying, dead or has become dangerous (§198 (6)(a)). In any other case the consent of the the Local Planning Authority ([Birmingham City Council](#) or [Tamworth](#) or [Sandwell](#) or [Dudley](#) or [Bromsgrove](#) or [North Warwickshire](#) or [Stratford-upon-Avon](#)) will have to be obtained before anything is done to the tree.

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

2.3 In addition to local authority planning consent, consent may also be required from the archdeacon, or by way of faculty, for work to be done to trees, which come within the terms of this Act (see below).

T3. Expert Advice [see T5. regarding new planting schemes]

3.1 Many Local Planning Authorities [yours will be [Birmingham City Council](#) or [Tamworth](#) or [Sandwell](#) or [Dudley](#) or [Bromsgrove](#) or [North Warwickshire](#) or [Stratford-upon-Avon](#)] employ an Arboricultural Officer who should be able to give advice about tree safety and the type of tree maintenance required.

3.2 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.

3.3 An Arboricultural Contractor, often known as a tree surgeon, will undertake work recommended by a consultant or on the basis of his own recommendations.



3.4 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 or the Directory of Arboricultural Consultants and Contractors (tree surgeons). The Directory is maintained by [The Arboricultural Association](#), which is a registered charity, and its address is Ampfield House, Ampfield, HAMPSHIRE SO51 9PA. Listing in the Directory is an assurance of competence.

T4. Inspection of Trees

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

4.2 Any tree subject to a tree preservation order must be inspected by the person carrying out the quinquennial inspection of the church under the Inspection of Churches Measure 1955 (see the [Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#), Schedule 3, §3). 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

5.1 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.

5.2 The consent of the archdeacon [of [Birmingham](#) or of [Aston](#)] should be obtained before any planting is done, but, where a scheme of planting is proposed, the advice of the Diocesan Advisory Committee and a faculty from the chancellor will be required. [For professional help with designing a scheme, contact your inspecting architect, [The Landscape Institute](#) or [The Arboricultural Association](#)].

T6. Felling Trees

6.1 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 [of [Birmingham](#) or of [Aston](#)] for his authorisation for such felling.

6.2 Where it is desired to fell a sound tree occupying space, which the PCC wishes to use for some other purpose, the advice of the Diocesan Advisory Committee and a faculty from the chancellor must be obtained.

T7. Lopping and Topping Trees

7.1 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 Diocesan Advisory Committee.

7.2 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 [of [Birmingham](#) or of [Aston](#)], who may authorise the work or refer the matter to the Diocesan Advisory Committee and the chancellor.

T8. Keeping of Records

8.1 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, INTERMENTS and MONUMENTS IN CHURCHYARDS

Introduction

These regulations have been amended [2006] after representations made by the clergy of the Diocese, the Diocesan Advisory Committee and by the Archdeacons. They reflect widespread concern that a number of churchyards are in danger of appearing 'cluttered' and inappropriate owing to the failure to abide by previous Regulations.



Christian burial places can, should and ought to encourage the faith, the tranquility and comfort that the faith brings, and trust in God. Tasteless and inapposite memorials are to be discouraged and clergy are advised where they are understandably under some pressure from a bereaved family to take the advice of the Archdeacon and/or the Chancellor in appropriate cases.

B1. Overriding Objective

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.

Incumbents must not in any circumstances authorise the breach of these regulations without reference to the Chancellor for his approval.

B2. Right of Burial

- (i) Parishioners, those on the electoral roll of the parish concerned and all persons dying within the parish boundaries have a right to 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.
- (ii) 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.
- (iii) No one has a right to be buried in a particular part of a churchyard but grave spaces may be reserved by Faculty.
- (iv) 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 (see below).

B3. Erection of Monuments

(i) 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.



(ii) Neither the relatives nor the personal representatives nor the deceased's close friends have a 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 Regulations below.

(iii) 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.

(iv) Any application to erect a monument shall be made to the incumbent on [Form A](#) but only following the discussions with the incumbent referred to in (iii) above. [There are no regulations explicitly concerning memorial safety, though mention is made later in this text and within the document "Caring for Your Church", available from the "Looking After Your Church" section of this website, and at the [HSE website](#)].

(v) 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.

(vi) 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 specifically directs otherwise) authority to permit the introduction of monuments which come within the limits set out in regulation B4 below.

(vii) 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.

(viii) 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. The authority of the incumbent to permit monuments or memorials

Provided he 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:

(i) 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.

(ii) The headstone or cross may be no larger than 1.25m x 0.65m x 0.11m [4ft x 2ft x 4in] and no smaller than 0.60m x 0.50m x 0.08m [2ft x 1ft8in x 3in].

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



(iv) 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 [4in] in any direction beyond the upright stone, unless a vase hole is included when the front projection may be extended to 0.18m [7in] in front of the stone.

(v) The upright stone, or base if used, is fixed onto a foundation slab which must extend 0.08m [3in] to 0.15m [6in] 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.

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

(vii) Generally, the inscription is in words and numbers only (but see the exception below) 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.

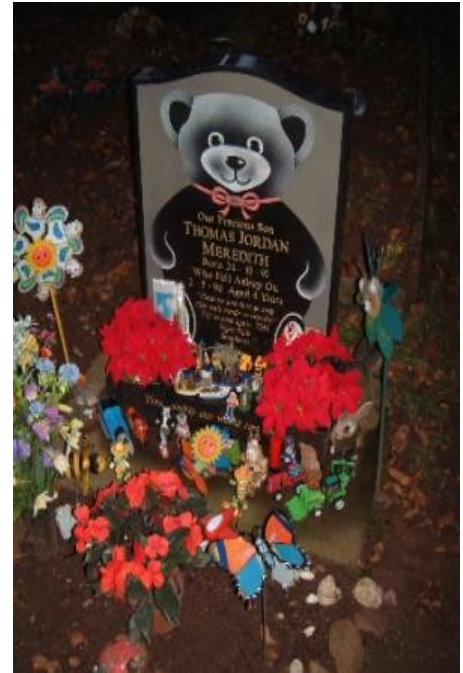
The incumbent may permit the side bearing the inscription to be polished.

(viii) 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 0.15m x 0.15m (6in x 6in).

(ix) 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 [0.75in] in height.

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

- (i) 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
- (ii) Monuments made of more than one type of stone
- (iii) Monuments in the shape of hearts, urns or statues depicting humans or otherwise [e.g. the teddy bear opposite]
- (iv) Monuments with more than one side polished
- (v) Monuments with pictures or photographs on them
- (vi) Kerbing, railings or chippings
- (vii) Any kind of lighting.



B6. The role of the Chancellor

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 Diocesan Advisory Committee before deciding whether the application for such a monument shall be made by way of petition for a Faculty [obtainable from the "Looking After Your Church" section of this website].

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. The Interment of Cremated Remains

- (i) 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.
- (ii) A Faculty must be obtained in all cases where it is desired to inter cremated remains in ground no longer open for burials.
- (iii) 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.



- (iv) 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.
- (v) The scattering of ashes in a churchyard is never permitted. [Funnelling involves cutting a 2ft cross out of the turf, its arms being V-shaped in section and 4in wide at the top, and deep holes punched in the bottom so that the cremated can be inserted into the holes via a special funnel-shaped container; this is then removed and the turf immediately replaced].
- (vi) Each interment of cremated remains should be recorded in a Book of Remembrance.
- (vii) 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 0.45m x 0.30m [1ft6in x 1ft]. A proposal for any memorial outside these limits must be referred to the Chancellor.

B8. Flowers and other items on Graves

- (i) 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.
- (ii) Cut flowers may be left on a grave but must be cleared away when they die.
- (iii) 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.
- (iv) 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 wardens or their deputy at any time 42 days after interment.

B9. Breaches of Regulations

- (i) 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.
- (ii) If a memorial etc is erected in breach of these Regulations the Chancellor may order its removal.



B10. The PCC

- (i) 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.
- (ii) Is encouraged to approve an appropriate booklet for those bereaved setting out in less legalistic form what their rights, duties and responsibilities are.

(iii) 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. Generally

(i) Any application to the Chancellor should be sent to the Diocesan Registrar's Office, No. 1 Colmore Square, Birmingham, B4 6AA [[click here to contact by e-mail](#)].

(ii) 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 Diocesan Advisory Committee. 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

[[Form A](#) follows]

DIOCESE OF BIRMINGHAM

FORM A (Application to Introduce a Memorial into a Churchyard)

The Chancellor of the Diocese has delegated to Ministers authority without Faculty to permit the kinds of memorial described in the Diocesan Churchyard Regulations issued 1 October 2006. These Regulations should be consulted before completing this form. A memorial falling outside the terms of the Regulations cannot be allowed by the Minister. Application to erect such a memorial must be made to : The Diocesan Registrar, c/o Martineau, No. 1 Colmore Square, Birmingham, B4 6AA. In the absence of a Minister, Part B may be completed by the Rural Dean. The Registrar will supply copies of the Churchyard Regulations and this form on request.

PART A To be completed by the Applicant and the Memorial Mason

Name of churchyard	
Title and Full Name of Applicant Address	
Tel. No.	
Full name of deceased	
Date of death of deceased	
Date of burial	
Relationship of applicant to deceased	
Name of Monument Mason Address	
Tel. No.	
Type of Memorial	Headstone/Cross/Cremation Plaque/Other.....
Size of Memorial and Base	
Type of stone. Colour. Shade	
Surface finish	
Description of any Carving or Decoration	
Wording of Inscription	
Type of Lettering	
Size of Lettering	
Colour of Lettering	
Particulars of any Vase incorporated in the Memorial	

1. I have attached to this form a sketch or design of the proposed memorial.
2. I have read the current edition of the Churchyard Memorial Regulations issued by the Chancellor of the Diocese.
3. I apply to the Minister or to the Chancellor to grant permission for the memorial herein described and I undertake that, if permission is granted, the monument will be erected in exact conformity with that description.
4. If this application cannot be approved by the Minister and is therefore to be submitted to the Chancellor of the Diocese for consideration, I attach to this application two photographs, one showing the grave, and the other taken at a sufficient distance from the grave to show the memorials nearby.
5. I further undertake to indemnify both the Minister and the Parochial Church Council against all costs and expenses to which they may be put in respect of any deviation from the undertaking given in 3 above.

Dated..... Signed..... Applicant

I/We undertake to abide by the above.

Dated..... Signed..... Monumental Mason

PART B To be completed by the Minister or Rural Dean

I am able/unable to authorise the introduction of the above memorial into the churchyard.

Dated..... Signed..... Minister/Rural Dean

This application should be completed, signed and returned to:-

The Diocesan Registrar, No. One Colmore Square, Birmingham B4 6AA together with a cheque for £162.85 made payable to Martineau in payment of the fee.

FOR USE BY THE CHANCELLOR ONLY

Signed

Dated

Gravestone and memorial safety [this article not part of the Regulations]

1. Introduction

The DAC [Diocesan Advisory Committee for the Care of Churches] has been asked to consider the appropriate safety precautions which should be made known to all parishes where there are gravestones and other memorials in churchyards. There have been accidents when gravestones have collapsed onto people, and a Home Office sub-committee has been concerned with this topic. Birmingham City Council and Solihull MBC have been alerted to the risk in their municipal cemeteries and have undertaken a scheme of inspection and repair where necessary [by mid-2006, Birmingham LA had developed a Memorial Safety Policy and were implementing a rolling 5-year programme. Also relevant is treatment of closed churchyards, where interments no longer take place: scope of responsibility for these is dealt with in the Local Government Act 1972, s215]. The Council for the Care of Churches has also issued some helpful guidance. There has been at least one consistory court hearing which has considered the issue.

The Birmingham DAC comprises numerous experienced architects and other professionals, many of whom have served on the DAC for a long time. Our joint experience has been that we have sometimes been concerned that parts of memorials such as railings or other metal work may become unsafe and offer jagged edges or potential tripping hazards. We have not encountered cases of the collapse of gravestones causing injury. We believe that there may be a more significant problem in large municipal cemeteries where there is a greater likelihood of children playing unsupervised.

It is necessary to offer some guidance on good practice so that those responsible will be confident that if they follow the guidance, they will have acted in accordance with the duty of care imposed by statute on the occupiers of premises to which the public may gain access.

2. New memorials

Most churchyard memorials are single gravestones. These should have one third of the total length firmly embedded in the ground. Where this is achieved there is no 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 stone work and if appropriate calculations to prove 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.

3. 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 for stability 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 of it] and pulling on it as he gets to his 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 hazards on pathways and to record if there is no 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 or 35 kg. In municipal cemeteries this method of testing is carried out and we do not disagree with it. But churchyards and their memorials are not the same. The Ecclesiastical Insurance company [EIG] does not require a test using such a device. It would not be readily available to the average parish and we agree with the insurers that their simple method of testing is sufficient and appropriate for use in the churchyards of this Diocese.

4. 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 which is found to be at risk of collapse, the archdeacon [Aston or Birmingham] should be informed. The archdeacon will advise with the benefit of local knowledge of the individual churchyard. In practise, there is no objection to a decision being taken to lay a dangerous gravestone on the grave to prevent danger were it to collapse. But we do not welcome or encourage this safety precaution unless it is necessary and would expect the stone to be reinstated in a safe and upright condition in due course.

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

5. 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. [However, urgent safety needs usually take precedence, with a faculty being applied for: contact the diocesan registry on 0870-763 1483 in these cases].

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 such family can be traced, then they should be given the opportunity to make any repair or alteration, and this can be included in the application, assuming that there was agreement as to the work required.

6. Municipal cemeteries

These notes are not intended to relate to large municipal cemeteries [scope of responsibility for which is dealt with in the Local Government Act 1972, s215]. 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 procedure noted at 4 and 5 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 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.

*The Chair and members of Birmingham DAC
October 2004*

Memorialisation in general

The DAC is conscious that relatives and friends will want to commemorate a life quite soon after that person has died.

It is often better, however, to allow some months to pass before everyone agrees on an appropriate style of design (even if it has been decided that, say, a piece of stained-glass, or a candlestand, or other furnishing inside the church is desired).

DAC has considered whether a 2yr moratorium is appropriate for alterations to existing stained-glass, or introduction of new glass, but believes that only the particular circumstances of each case will help determine an appropriate 'pause' before any works are put in hand.

Nonetheless, you are recommended to wait at least 6 months before applying for permission to make a change, or add, 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 time.

Closed churchyards (responsibilities) [this article is not part of the Regulations]

A closed churchyard is one in which burials no longer take place apart from in exceptional circumstances. "Closed" is not a reference to rights of abilities of public access. Maintenance responsibility for such places can often be formally handed over by the local PCC to the local authority. Ownership remains with the PCC.

Upon closure, an Order is made. That document may be accompanied by a Maintenance Agreement, which may make explicit the aspects for which the 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. (The relevant extract follows these introductory paragraphs).

Within it, "decent order" is held to include dealing with "saplings and bushes ... long rank grass, weeds and brambles". Moreover, the diocesan registrar confirmed in Mar-07 that responsibility for trees in churchyards closed by an Order rests with the local authority, because of legislation introduced in 1995.

From 1993, it had been a provision in [Schedule 6 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991](#) which gave rise to the statement in earlier versions of diocesan Churchyard Regulations that PCCs were responsible for trees, irrespective of whether the churchyard remained open for burials or had been formally closed.

To curtail an inconsistency between church and secular law, this subsequent legislation [[s13 of the Church of England \(Misc. Provisions\) Measure 1995](#)] amended that provision, clarifying that:

(a) in subsection (1) for the word "churchyards" there shall be substituted the words "a churchyard which the council [that is, the PCC and NOT the local authority] is liable to maintain"

Written guidance in Mar-04 by the Chancellor of Bath & Wells diocese, Timothy Briden, explains this change and concludes unequivocally that:

"PCCs are to have no responsibility for the trees in churchyards maintainable by local authorities. Instead the maintenance obligation taken over by the local authorities (embraced within the statutory words 'shall maintain it by keeping it in decent order' in s215 of the Local Govt Act) has of necessity to extend both to churchyards and their trees. // It follows that local authorities are now required by law to care for and maintain trees in closed churchyards under their control".

The full text of Chancellor Briden's reasoning was sent to appropriate contact in all local authorities in the diocese, in Mar-07.

Local Government Act 1972
s215 Maintenance of a closed churchyard

(1) Subject to subsection (2) below, where outside the area subject to the Welsh Church Act 1914 a churchyard has been closed by an Order in Council, the parochial church council shall maintain it by keeping it in decent order and its walls and fences in good repair.

(2) A parochial church council which is liable under subsection (1) above to maintain a closed churchyard may-

- (a) if the churchyard is in a parish or community having a separate parish or community council, serve a written request on that council to take over the maintenance of the churchyard;*
- (b) if the churchyard is in a parish not having a separate parish council, serve such a request on the chairman of the parish meeting;*
- (c) if the churchyard is in a community not having a separate community council, serve such a request on the council of the [county or county borough] in which the community is situated;*
- (d) if the churchyard is in England elsewhere than the City and the Temples and is not in any parish, serve such a request on the council of the district or London borough in which the churchyard is situated;*

and, subject to subsection (3) below, the maintenance of the churchyard shall be taken over by the authority on whom the request is served or the parish meeting, as the case may be, three months after service of the request.

(3) If, pursuant to subsection (2) above, a request is served on a parish or community council or the chairman of a parish meeting and, if that council or meeting so resolve and, before the expiration of the said three months, give written notice of the resolution to the council of the [district, Welsh county or (as the case may be) county borough] and to the parochial church council maintaining the churchyard, the [local authority to whom the notice is given], and not the parish or community council or parish meeting, shall take over the maintenance of the churchyard at the expiration of the said three months.

(4) Where before the passing of this Act a church council established under the constitution of the Church in Wales, in purported exercise of the powers conferred by s18 of the Burial Act 1855 (maintenance of closed churchyard payable out of rates), issued a certificate with respect to a closed churchyard to a local authority, and that authority thereupon took over the maintenance of the churchyard, the authority's action shall be deemed to have been lawful for all purposes, and the authority for the time being responsible for the maintenance of the churchyard shall have the like duty with respect to its maintenance as a parochial church council elsewhere than the area subject to the Welsh Church Act 1914.

(5) In subsection (1) above, "the area subject to the Welsh Church Act 1914" means the area in which the Church of England was disestablished by that Act.

NOTES: Amendment

Words in square brackets substituted by the Local Government (Wales) Act 1994, s66(5), Sch 15, para 45.