

# DIOCESE OF CHICHESTER



## CHANCELLOR'S GENERAL DIRECTIONS CONCERNING CHURCHES AND CHURCHYARDS

Issue 5  
April 2020

‘It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same.’

***The Canons of the Church of England, canon F13(3)***

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*‘A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.’*

***Ecclesiastical Jurisdiction and Care of Churches Measure 2018, section 35***

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*Please remember in your prayers all those whose work and witness is concerned with the operation of the faculty jurisdiction in the Diocese of Chichester*

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These Directions replace in their entirety Issue 4 and come into force on 1 April 2020. They have been revisited and revised to reflect the procedural changes effected by the Faculty Jurisdiction (Amendment) Rules 2019.

The Additional Matters Order No. 1 of 2018 is hereby revoked.

Issue 5: April 2020

1. **INTRODUCTION**

1.1 Church buildings belong not to any particular worshipping community, but are held in trust for generations yet to come. To that end no change may be made to a church or churchyard (or to the content of either) without due authority. The authority is that of the bishop. It is exercised by the chancellor and is known as the faculty jurisdiction.

1.2 Many churches are listed buildings, the alteration of which would ordinarily require listed building consent from the local planning authority. However, churches enjoy the benefit of the ecclesiastical exemption, on the understanding that the faculty jurisdiction has equal safeguards to those under listed building control.

1.3 However, the exemption does not extend to planning permission. If building or engineering operations are contemplated (such as the construction of an extension or the laying of a path), or if an alteration is to be effected which will materially affect the external appearance of the church, then planning permission will be required in addition to the requirement for a faculty.

1.4 The faculty jurisdiction seeks to balance the interests of petitioners, who propose change, with those of various heritage organisations, local planning authorities, and parishioners (whether churchgoing or not) as well as others with a legitimate interest in the church or churchyard.

1.5 Incumbents (which expression throughout these directions also includes priests-in-charge) and churchwardens are under a canonical duty to obtain a faculty if any alterations, additions, removals or repairs are proposed to be made in the fabric, ornaments, or furniture of the church. See Canon F 13 paragraph 3. Equally, it is expected of inspecting architects and others who hold themselves out as qualified to work on ecclesiastical projects that they should not participate in works to churches in the absence of a faculty. The consistory court has power to compel unauthorised works to be remedied and to forbid by injunction threatened breaches of the faculty jurisdiction.

1.6 Such steps will be unnecessary if incumbents, churchwardens and other intending petitioners have an understanding of the rationale which underscores the faculty jurisdiction and a working knowledge of its operation. These directions are not intended as a substitute for the primary sources, namely:

- Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (as amended)
- Faculty Jurisdiction Rules 2015 (as amended)

There are many in the diocese well able to give advice and clarification. Queries should be directed to the archdeacon or the registrar in the first instance and practical advice can generally be obtained via the secretary to the Diocesan Advisory Committee.

1.7 In broad terms, works to churches fall into one of the following categories:

*i. Minorworks not requiring a faculty*

These are works of so minor a nature for which no faculty is required. They are arranged in two national lists which were substantially enlarged in new versions effective from 1 April 2020. The lists are reproduced in Appendix I to these Directions

**List A** comprises classes of work which may be undertaken without a faculty, providing the specific conditions set out in the right hand column are met.

**List B** is similar, except that before any of these classes of work may be undertaken, the written approval of the Archdeacon is required who may impose conditions when giving such approval.

An application may be made to the chancellor for **directions as to matters not included in List A or List B** that are of such a minor nature that they may be undertaken without a faculty. In the light of this new provision, it is no longer necessary to make provision for dispensations from faculty.

*ii. Certain headstones and other memorials*

The incumbent has an authority, delegated by the chancellor, to permit the erection of headstones of a type and size specified in the Churchyard Regulations at Appendix II. They are discussed in more detail at paragraphs 6.10ff below and include some revisions since issue 3 of these Directions.

*iii. Temporary minor reordering*

The Archdeacon has power to grant a licence for a temporary minor re-ordering under r 8.2. This is explained further in paragraph 6.19 below.

*iv. Chancellor's faculty*

All other matters require a faculty from the chancellor.

2. **PRELIMINARY STEPS**

21 Works requiring faculties vary from the comparatively trivial to the major. The greater the effect upon the historic integrity of the building, the greater the need for consultation. It is imperative that discussions about proposals take place at an early stage and involve not merely the PCC, but the entire congregation and, where appropriate, the wider parish community. If the appearance is given that a project is being forced through by a cabal, this may cause lasting resentment.

22 All PCCs are encouraged to address three core questions: why? how? and when? At the same early stage, consideration must also be given to funding. This should include not merely the cost of the works, but also the professional fees of architects and surveyors as well as the costs in obtaining a faculty, possibly in contested proceedings. Good stewardship demands commercial realism.

**Listed Churches: Statements of Significance and Needs**

23 Where the church is a listed building (of which there are more than 350 in the Diocese of Chichester alone), the law imposes additional requirements. Parishes need to establish the grade of their church's listing and obtain a copy of the list description. They should then prepare a **Statement of Significance** and a **Statement of Needs** under Part 4 of the Faculty Jurisdiction Rules 2015.

- The **Statement of Significance** must describe the significance of the church in terms of its special architectural and historic interest (including any

contribution made by its setting) and any significant features of artistic or archaeological interest that the church has so as to enable the potential impact of the proposals on its significance, and on any such features, to be understood.

- The **Statement of Needs** should set out clearly and succinctly the justification for the proposal.

If the proposal is likely to result in harm to the significance of the church as a building of special architectural or historic interest, the Statement of Needs must set out the basis on which the petitioners contend that the proposal would result in public benefit that outweighs that harm. It is important that the parish turns its mind to this question at the time the proposal is being formulated and sets out a cogent case, since this is central to the legal test which will be applied by the chancellor when determining whether to grant or refuse the faculty.

### Listed Churches: Consultation

- 24 The **Diocesan Advisory Committee** is a statutory body whose functions include advising PCCs on all matters concerning church buildings. Advice should be sought at an early stage. The DAC can also advise upon which consultee bodies to approach and, if necessary, help to convene an on-site meeting of representatives of relevant organisations.
- 25 Certain bodies have a right to be consulted as an integral part of the faculty jurisdiction. The DAC secretariat will advise PCCs when consultation should be carried out. The earlier it happens the better, particularly when ambitious projects are being contemplated. Consultee bodies are sources of expert opinion whose views can often help improve projects or refocus preliminary thinking.
- 26 The criteria for consultation depend on the listing status of the building and the likely impact of the particular works or proposals. These criteria are broadly as follows.
- 27 Consultation with **Historic England** when the works or proposals:
- (a) involve the demolition of a grade I or II\* listed building or its alteration to or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest.
  - (b) comprise the complete demolition of a grade II listed building or the removal of all or a substantial part of the structure of its interior (including any principal internal elements such as staircases, galleries, load-bearing walls, floor or roof structures and major internal fixtures such as pews, screens and organs).
  - (c) are likely to affect the archaeological importance of any building or of remains within the building or its curtilage.
- 28 Consultation with any of the **National Amenity Societies**<sup>1</sup> should take place where the

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<sup>1</sup>The National Amenity Societies comprise: the Ancient Monuments Society (before 1715); the Council for British Archaeology; the Georgian Group (1700-1840); the Society for the Protection of Ancient Buildings (1720 or earlier); the Victorian Society (1837-1914); and the Twentieth Century Society (1914 onwards). Whether a national amenity society is likely to have an interest in works will depend on the age of the building (or the relevant part of it) and the likely effect on it of the proposed works.

works or proposals:

- (a) involve demolition of a listed building of any grade or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest; or
- (b) involve demolition affecting the exterior of an unlisted building in a conservation area.

29 Consultation with the **Local Planning Authority** should take place where the works or proposals:

- (a) involve demolition of a listed building of any grade or its alteration or extension to such an extent as would be likely to affect its character as a building of special architectural or historic interest; or
- (b) are likely to affect the archaeological importance of a building or archaeological remains within the building or its curtilage; or
- (c) involve demolition affecting the exterior of an unlisted building in a conservation area.

210 Consultation with the **Church Buildings Council** should take place where the works or proposals :

- (a) involve the demolition of a grade I or II\* listed building or its alteration or extension to such an extent as would be likely to result in harm to its character as a building of special architectural or historic interest;
- (b) involve demolition of a grade II listed building or its alteration or extension to such an extent as would be likely to result in substantial harm to its character as a building of special architectural or historic interest or to its setting;
- (c) are likely to affect the archaeological importance of a building or of remains within the building or its curtilage.
- (d) involve the conservation, alteration or disposal of an article of special historic, architectural, archaeological or artistic interest;
- (e) involve the introduction of an article of special historic, architectural, archaeological or artistic interest (including new work) in a grade I or II\* listed building;
- (f) involve the alteration, extension or re-ordering of a church in a way that is likely significantly to affect the setting of an article of special historic, architectural, archaeological or artistic interest;
- (g) involve the movement or removal of an article of special historic, architectural, archaeological or artistic interest such that the article might be adversely affected unless special precautions are taken.

211 The system introduced in April 2020 front-loads consultation and requires the DAC to advise parishes when they should consult Historic England, the national amenity societies, the Local Planning Authority and the Church Buildings Council: rules 4.3 and 4.7. The parishes must do the consultation themselves: the DAC's duty is merely to advise on who should be consulted. There are therefore likely to be fewer occasions where the Chancellor has to order special citation.

212 When consulting any of these bodies, the parish must provide:

- the **standard information** in Form 1A or Form 1B;
- a summary of the works or other proposals being consulted on;
- any relevant designs, plans and photographs;
- any other documents giving particulars of the works or other proposals; and
- the **statement of significance** and the **statement of needs**

The bodies consulted have 42 days within which to respond, or 21 days in respect of revisions or amendments to proposals.

### 3. **DIOCESAN ADVISORY COMMITTEE**

31 It is a legal requirement that parishes seek the formal advice of the DAC prior to lodging the majority of petitions. An intending petitioner must submit the following documents to the DAC when seeking its advice (Rule 4.2).

- **Standard Information** (see below);
- a summary of the works or other proposals on which advice is being sought;
- any relevant designs;
- any relevant plans;
- any relevant photographs;
- any other documents giving particulars of the works or other proposals;
- any relevant correspondence received from the Church Buildings Council; and
- where there has been consultation with Historic England, any of the National Amenity Societies and/or the Local Planning Authority (see above), a copy of any response(s).

32 Where the proposal involves making changes to a listed building, the parish must also supply a Statement of Significance and a Statement of Needs. The DAC may also advise that a Statement of Significance and Statement of Needs be supplied in respect of an unlisted building when it considers it appropriate.

33 After considering a request for formal advice, and where necessary referring the matter back for additional information or clarification, the DAC issues a **Notification of Advice**, which either recommends the proposal, does not recommend the proposal; or does not object.<sup>2</sup> The DAC cannot issue a Notification of Advice until it has had response from the relevant bodies with whom the parish has consulted (provided such responses are received within 42 days).

34 The Notification of Advice must describe the works or proposals in the manner in which it recommends them. This description should be used in the petition and public notice. If it does not recommend the works or proposals (or does not object to them) the Notification of Advice should include the DAC's principal reasons for so doing. If it recommends the works or proposals (or does not object to them), in

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<sup>2</sup> In a case where the DAC does not object to a proposal, it must consider whether to include in its Notification of Advice its principal reason for so doing.

circumstances where consultee bodies have raised objections, the Notification of Advice must include the DAC's principal reasons for so doing, notwithstanding those objections.

- 35 A **Notification of Advice** is NOT authority for works to proceed. It merely records the advice of the DAC. It is unlawful for works to be carried out without the authority of a faculty. Equally, the absence of a recommendation from the DAC does not prevent a parish from petitioning the chancellor for a faculty.

#### 4. **THE PETITION**

- 41 If after this process of consultation, a parish decides it wishes to pursue a proposal, it must initiate a legal process in the Consistory Court. The court is separate from and independent of the diocese and is presided over by a judge, known as the chancellor. Parishes become litigants in a judicial process which is entirely different from what has preceded it.

- 42 Once the DAC's **Notification of Advice** has been received, the parish may submit a petition for a faculty to the Registry using the prescribed form. The proposal must be fully and accurately stated and must be the same as that in relation to which the advice of the DAC was sought. The following are to be submitted with every petition:

- **Standard Information**
- DAC's **Notification of Advice**;
- any relevant designs;
- any relevant plans;
- any relevant photographs;
- any other documents giving particulars of the proposal; and
- copies of any relevant correspondence received from consultee bodies.

- 43 Every petition is subject to the requirements of public notice unless dispensed with by the chancellor (Rule 6.1). The notice must be displayed for a continuous period of 28 days both inside and outside the church.

- 44 A copy of the petition and of all the supporting documentation submitted with it must be displayed in the church or in another place where they may conveniently be inspected by the public. These must remain on display until the *determination* of the petition (Rule 5.7) which could be many months if the petition is contested.

- 45 The chancellor may be required under the Rules or may exercise his discretion to give special notice of the petition to specific individuals or organisations (e.g. the Commonwealth War Graves Commission); to order publication in newspapers or other publications (including a website), including the diocesan website. Special provisions apply in the case of demolition or partial demolition. The petition and supporting documentation will be publicly accessible online.

## 5. ADJUDICATION

51 Petitions for a faculty are determined by the chancellor.

### Written representations

52 Objectors to a petition may elect to become a party to the proceeding or simply to have their letter or other representations taken into account by the chancellor when determining the matter. If appropriate, contested proceedings may be determined on written representations.

### Burden and standard of proof

53 The burden of proof lies on the proponents of change and must be discharged on the balance of probabilities. However, where changes to a listed church are proposed, a more rigorous approach is adopted. The consistory court now follows the framework and guidelines commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158, by asking itself a series of questions:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is no, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is yes, how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2\*, where serious harm should only exceptionally be allowed.

### Costs

54 With regard to costs, two separate instances must be considered - first the court costs themselves, and secondly the legal fees, expenses and disbursements which may be incurred by the parties. The relevant principles may be summarised as follows:

#### *Court Fees*

- i. fees are payable at rates fixed by annual Fees Orders made by the Fees Advisory Commission under the Ecclesiastical Fees Measure 1986;
- ii. such fees are prima facie payable by the parish;
- iii. parishes will be ordered to pay the court costs even when they are successful. Whilst the consistory court retains a discretion, an order for reimbursement of some or all of the court fees is unlikely to be made unless there is clear evidence of unreasonable behaviour which has unnecessarily added to the procedural costs prior to the hearing;
- iv. since appeals to the Court of Arches lie only with leave, the same principles

will apply as in the consistory court on the question of court costs;

*Legal expenses of the parties*

- v. the practice in the consistory court is not to make an order for costs between the parties save where unreasonable behaviour has occurred;
- vi. if a party appeals to the Court of Arches and is unsuccessful, then there is no reason why as a general rule that party should not pay the other party's costs of refusing the appeal.

55 The Ecclesiastical Judges Association has produced a booklet entitled *Guidance on the Award of Costs in Faculty Proceedings in the Consistory Court* (Revised and Reissued 2011), which is available on the Consistory Court page of the diocesan website.

6. **PARTICULAR CASES**

61 What follows is a miscellany of the more common matters which arise in the consistory court. For convenience they are arranged alphabetically.

***Churchyards***

Every parishioner, together with those whose names are entered on the electoral roll, has a right of burial in the graveyard of the parish provided room permits. Other persons may be buried only with the consent of the incumbent which should be given or withheld in accordance with general guidance given by the PCC. The position within the churchyard for a burial to take place is a matter for the incumbent. See also **Graves** and **Reservation of Gravespaces**. Since access to the church building will often be required for routine maintenance and inspection or for the erection of scaffolding, incumbents generally ought not to permit interments within 5 metres of any external wall. This practice would also eliminate the unfortunate and unsightly juxtaposition of a modern headstone next to an historic church.

62 Incumbents and PCCs having the care of churchyards should, if they have not already done so, draw up regulations governing the upkeep of graves so that those who wish to tend a grave in the churchyard may know what is and is not allowed. Consideration should be given to including the following provisions in any such regulations:

- i. bulbs and small annual plants may be placed in the soil of any grave;
- ii. plants or cut flowers may be placed in a removable sunken container (preferably of unpolished aluminium) in the soil of any grave;
- iii. wreaths and cut flowers placed on graves and plants and flowers in containers may be removed, when withered, by those authorised to do so by the incumbent;
- iv. no artificial flowers or foliage may be placed on or about graves (except for Remembrance Day poppies) and, if so placed, will be removed.
- v. Other objects, including railings, chippings, statues, keepsakes, toys and other mementoes are not permitted on a grave without authorisation by faculty.

Careful thought will need to be given to requests for the planting of trees and shrubs in preference to the erection of headstones. Memorials for persons not buried in the churchyard are uncommon and may not be sanctioned by the incumbent. They require a faculty and exceptional circumstances will need to be demonstrated.

***Demolition***

- 63 When proposed works include the demolition or partial demolition of a church, certain additional provisions apply. Parishes should consult the Registry for guidance if this is contemplated.

***Diocesan contribution***

- 64 The faculty jurisdiction relates to part of the collective mission of the Church of England in the diocese. Sound Christian stewardship dictates that before parishes embark upon works, other than routine maintenance or repair, their parish contribution should be up to date. A parish which is in arrears will need to show good grounds as to why a faculty should otherwise issue.

***Disposal of church property***

- 65 The consistory court is traditionally reluctant to sanction the sale or other disposal of church property since it was acquired for a sacred purpose and hallowed for such use. Alternatives, such as placing objects in a museum under a loan agreement, ought first to be explored. However, the court will consider granting a faculty where the grounds for sale are sufficiently compelling to outweigh the strong presumption against disposal by any form of sale.

***Exhumation***

- 66 The doctrine of Christian burial constitutes the permanent consignment of mortal remains, as well as ashes, to the ground where they should lie undisturbed. The concept of ‘portable remains’ transported by relatives for their convenience is alien to this teaching. English ecclesiastical law is clear that exhumations should only be permitted in exceptional cases.

***Funding***

- 67 Financial assistance for the care and conservation of churches may be obtained from, amongst others, Historic England, the Church Buildings Council, lottery funding and interest-free loans administered by the archdeacon. Grants may also be sought from the Historic Churches Preservation Trust and the Sussex Historic Churches Trust. Parishes are advised:

- i to consult the archdeacon before making an application for a grant;
- ii to consult the Registrar before accepting any grant and, when consulting the Registrar, inform him of all the terms of the proposed grant;
- iii not to enter into any contract for the execution of works to be paid, or partly paid, for by the grant before the issue of the faculty sought;
- iv to submit all contractual documents concerned with the grant to the Registrar for his approval before signing them.

The secretary to the DAC will be pleased to advise on other sources of grant aid.

***Gardens of Remembrance***

- 68 Cremated remains may be buried anywhere in the churchyard as the incumbent permits. They attract the same reverence as a corpse and should not be divided for burial in different places but treated as a whole. Specific plots may be dedicated for the exclusive burial of ashes. The form of such Gardens of Remembrance depends very much upon individual circumstances and calls for vision and sensitivity. They will be a focus of grief, prayer and reflection for many generations and need to reflect

something of the resurrection. Parishes are encouraged to use imagination and first-rate designs and to utilise good quality materials. The use of rectangular slabs is unimaginative and, after all too little time, unsightly. Their appearance is utilitarian. The use of individual marker stones is discouraged, it being more appropriate to record names in a Book of Remembrance. Each parish will need to draft regulations for the use of the Garden of Remembrance, a model of which appears at Appendix IV. The content of such regulations will vary from one parish to another, but all should include provision for re-use after a period of say 25 or 50 years.

### ***Graves***

- 69 The incumbent has a discretion to authorise the erection of any headstone which falls within the types and classes permitted at Appendix I. Although the incumbent may refuse to permit the erection of a headstone which is authorised, they have no discretion to allow the erection of one which is not. It is open to individual applicants to apply for a faculty for the erection of headstones outside these categories. A standard form of Application is reproduced at Appendix II. Ownership of a headstone does not vest in the incumbent or the PCC but in the person who erected it and, after that person's death, in the heir-at-law of the person in whose memory it was erected.
- 610 Incumbents need to be meticulous in ensuring compliance with these provisions, particularly as this will need to be done at a time when relatives may be distressed and vulnerable. Well intentioned laxity will result in pastoral difficulties in later years and for their successors. Equally, monumental masons who hold themselves out as competent to work in consecrated churchyards in this diocese will be expected to be familiar with the relevant regulations. Headstones erected without the authority of the incumbent or which are not within the types or classes permitted by the regulations are liable to be removed by order of the consistory court. The costs incurred will fall upon the person responsible for the unlawful erection of the headstone, the incumbent and/or the monumental mason concerned.
- 611 The purpose of the regulations is not to impose homogeneity, since variety is to be encouraged, but to ensure that headstones are erected which are appropriate for the environment in which they are set and in keeping with the church building. Thought must be given to aesthetics and to the sensibilities of those who will have cause to visit other graves in the same churchyard. Where possible, local materials should be used. The consistory court actively welcomes applications from parishes to permit the creation or variation of regulations for specific churchyards which take into account local practice, tradition and custom and the particular environmental needs of the church and graveyard. Such regulations, created by the parish itself and authorised by faculty, are likely to be easier to implement and police.

### ***Inscriptions***

- 612 Headstones, memorials, stained glass windows and other church furnishings may all bear inscriptions. It is essential that inscriptions are factually accurate and are written in such a way as to be comprehensible by future generations. The wording of inscriptions should interest and inspire the reader. They should be reverent and seemly and avoid the bland. Readers will want to know something of the person or event commemorated, and descriptions should be fulsome and well expressed. The

use of pet names should generally be avoided as they can become meaningless and appear trite with the passing of time. Dates should be expressed in the form *7 August 1965* (or *7 8 65*) and both the date of birth and of death should generally be included. Skilled craftsmen and letter cutters should be used.

### ***Licences and leases***

- 613 It is increasingly common for parishes to request a faculty to permit the ‘secular’ use of part of a church or churchyard. Such secondary uses must be consistent with the mission and pastoral outreach of the church and should not compromise the primary use of the building for worship and mission.

### ***Memorial plaques***

- 614 Faculties for the erection of wall mounted memorial plaques are ‘sparingly conceded’ and a case of ‘exceptionality’ needs to be made out, whether in terms of civic or Christian service. Parishes should be encouraged to turn their minds, instead, towards the creation or repair of church furniture or ornaments in lasting memory of particular individuals. Such items may be suitably inscribed.

### ***Planning permission***

- 615 Development, i.e. building or engineering operations, such as an extension of the church, the erection of a lych gate, the laying of a path, a material alteration to the external appearance of a building, or (in the opinion of some but not all local planning authorities) floodlighting may also require planning permission. The parish's inspecting architect will be able to advise on whether it is required. As a general rule, the consistory court will expect planning permission (or a declaration that it is not required) to have been obtained prior to a petition for a faculty being lodged.

### ***Reservation of grave spaces***

- 616 Incumbents are under a statutory duty to maintain a register of burials. It is also important that the parish keeps an accurate plan of the churchyard indicating principal physical features and showing which grave spaces have been filled and which remain available for burial. Any spaces which have been reserved by faculty must be recorded on the plan which should be available for inspection by the archdeacon at their visitation. The reservation of a grave space is a privilege and will not be granted where space is so limited such as to prejudice those with a legal right of burial. See **Churchyards**.

- 617 Petitions for reservation will need to state:
- i. the precise location of the grave space in question; to be identified on a plan or, if this is impracticable, (and reasons must be given why it is impracticable) by full written description;
  - ii. the average number of burials of bodies in the churchyard over the last ten years;
  - iii. the number of grave spaces remaining in the churchyard;
  - iv. the full name and age of each person in respect of whom the petition is presented, and a statement of whether such person is married, single, widow or widower;
  - v. the terms of any resolution of the PCC concerning the petition. If the resolution supports the petition the resolution must state in full the reasons why the council supports the petition;

vi. the special reasons advanced on behalf of the applicant why the privilege of reservation, involving the curtailment of the rights of parishioners, should be granted. It may be appropriate to limit the period of time for which a grave space should be reserved, subject to the holder having the right to apply for an extension.

### ***Reservation of the Sacrament***

618 Where it is necessary to apply for a faculty concerning items used in the practice of the reservation of the Blessed Sacrament, the written approval of the bishop will be required. The *Bishop's Regulations for the Reservation of the Blessed Sacrament* appear at Appendix V.

### ***Re-ordering***

619 The archdeacon has power to grant a licence in writing for a scheme of temporary minor re-ordering for a period not exceeding two years (Rule 8.2). The scheme must not involve any interference with the fabric nor the disposal of any fixtures which are to be securely stored. The two-year period may not be extended by the archdeacon. If a petition for a faculty is submitted not later than two months before the expiry of the period, the scheme is deemed to be authorised until determination of the petition by the chancellor. In the absence of a petition, the archdeacon is required to take steps to ensure the position is restored at the expiry of the period.

### ***Telecommunications***

620 Telecommunications masts and antennae can provide a useful source of income to parishes in a manner which causes limited harm to the fabric of the church. Parishes should ensure that provision is made for routine maintenance of equipment and for its removal at the expiration of the period of the licence.

### ***Trees***

621 Special provisions apply in respect to petitions concerning the felling or lopping of trees and to their routine maintenance. Guidance as to the planting, felling, lopping and topping of trees is available from the Church Buildings Council.

## **7. URGENT AND EMERGENCY APPLICATIONS**

7.1 In the case of an emergency, such as storm, lightning strike, subsidence, arson, or theft of roofing materials, contact should be made with the archdeacon or registrar at the earliest possible opportunity. The court can authorise works necessary for health and safety concerns and to keep the building watertight. It is also empowered to grant interim faculties for urgent works of repair pending a full petition being lodged for a faculty. Permission to proceed can be obtained by telephone or by email when circumstances demand, and out of office hours if necessary.

THE WORSHIPFUL MARK HILL QC

Chancellor of the Diocese of Chichester

1 April 2020



## APPENDIX I

### CHURCHYARD REGULATIONS

Incumbents and priests-in-charge are temporary custodians not merely of the church building but, where there is one, of its burial ground. Responsibility for its care and maintenance rests with the PCC. Churchyards are an important feature of both rural and urban communities: an historic record of successive generations, a home for funerary monuments of architectural and aesthetic excellence, a setting for the church itself (many of which are listed buildings), and a place for reflection and prayer. It should be borne in mind that churchyards are different in their nature from municipal cemeteries. In addition, the upkeep of a churchyard is a considerable burden upon the limited resources of PCC funds.

Parishioners, those named on the electoral roll, and those dying within the parish all have a legal right of burial in the parochial burial ground. This right is not restricted to the baptised nor to members of the worshipping community. Thus the clergy are brought into direct contact with relatives of deceased parishioners in circumstances of extreme distress and often in a highly charged environment. Whilst this provides a valuable opportunity for ministry and outreach it can also create pastoral difficulties.

It is essential that the bereaved understand the meaning and consequences of burial in consecrated ground. Two particular features arise:

First, the nature of the rite of burial is to say 'farewell' to the deceased and to commend them to the mercy and love of God in Christ to await the transformation of resurrection. There is accordingly a theological finality to the burial of all interments, including those of cremated remains, in ground consecrated according to the rites of the Church of England. The prospect of exhumation at some future date and the relocation of remains must be ruled out.

Secondly, the bereaved must understand that by seeking a burial in consecrated ground, they are submitting to the jurisdiction of the consistory court which regulates the type of headstone or other marker which may be erected. This jurisdiction exists for reasons which are in part theological and in part aesthetic, since what may be unobjectionable in a municipal cemetery might be considered inappropriate (or even offensive) in an historic churchyard. It is the responsibility of the clergy to bring these matters to the attention of the bereaved at the earliest opportunity, and to inform them of these Regulations, so that their decision to seek an interment in consecrated ground must be fully informed. A failure to do so, however traumatic the pastoral situation, is a dereliction of duty and may prove more damaging in the long term. Many parishes find it helpful to provide a handout containing this information which can be taken away and read by the bereaved, and the chancellor commends this practice.

These Regulations are designed to encourage best practice and to eliminate bad practice. It is

unlawful for a monument to be introduced into a churchyard without permission. Generally such permission derives from the chancellor in the form of a faculty. However, for administrative convenience and to minimise expense, the chancellor delegates to the incumbent the authority to permit the introduction of a monument provided it is of a type which complies with the detailed provisions contained in these Regulations. The written application which accompanies these Regulations should be used in all cases (see Appendix E). During any vacancy, and in the absence of a priest-in-charge, the authority is exercised by the rural dean.

Applications for memorials should generally not be made until six months have passed since the interment. Not merely does this allow the ground to settle, but the passage of time permits a more reflective decision to be made than is often the case in the naturally emotional state of the early stages of grief. All close family members need to be consulted and a consensus achieved. The incumbent can offer help at this time in making suggestions to the bereaved of the types of memorial which might be introduced by reference to photographs or by pointing out examples in the churchyard itself. If this conversation precedes a visit to the stonemason it should avoid the difficulty and disappointment engendered by the selection of an inappropriate design. Although the grave itself is the property of the incumbent, any memorial will belong to the heir-at-law of the person commemorated and that person carries the duty to maintain it and the legal liability for its safety.

A headstone is a public statement about the person who is being commemorated. Making the right choice of stone, design and inscription is important not only to the relatives or friends who are going to provide the memorial, but also to the wider community because of the effect which the headstone may have upon the appearance of the churchyard. Attractive, well-conceived designs by skilled and imaginative craftsmen should be encouraged. In the search for a wider range of designs than those usually seen, reference should be made to the *Churchyards Handbook*, the booklet *Memorials by Artists* and other resources which can be made available by the DAC. Sculpture or other statuary is not discouraged but must be authorised by faculty.

Also to be encouraged are fulsome inscriptions which give a flavour of the life of the person commemorated rather than blandly recording a name and dates. Epitaphs should honour the dead, comfort the living and inform posterity. They will be read long after the bereaved have themselves passed away. A memorial stone is not the right place for a statement about how members of the family feel about the deceased nor how they would address him or her were they still alive. Passages of scripture, which have a timeless quality, are to be preferred.

## HEADSTONES

### (i) Size

No more than 4ft nor less than 2ft 6in high (1200mm, 750mm);

No more than 3ft nor less than 1ft 8in wide (900mm, 500mm);

No more than 6in nor less than 3in thick (150mm, 75mm), unless slate is to be used in which case a thickness of 2in (50mm) is permitted;

In the case of infant burials, headstones must be no less than 2ft x 1ft 3in x 2in (600mm x 375mm x 50mm).

A base forming an integral part of the design of a headstone may be included, provided it does not project more than 2in (50mm) beyond the headstone in any direction and provided that it is fixed on a foundation slab of an approved material which itself is fixed flush with the ground and extending 3in to 5in (75mm to 125mm) all round so that a mower may freely pass over it.

Up to two integral sockets for flower vases are permitted in bases, in which case the base shall be of the following dimensions:

Height (from ground)	3 ins (min) to 6 ins (max)
Width	2ft (min) to 3ft (max)
Depth	10 ins (min) to 1ft (max)

(ii) Materials

The following stone is permitted:

Limestone:	Portland	Hornton
	Purbeck or Horsham	Nabresina
	Derbyshire	Caen/Normandy
	Hopton Wood	Aura/Aurisina
Sandstone:	York	
Slate:	Blue/Black (Cornish)	Green (Westmoreland)
	Grey/Blue (Welsh)	
Granite:	Light to medium grey	

(iii) Position

No memorial may be erected within 5 yards (4.57 metres) of the outer wall of the church building save by authority of a faculty.

(iv) Appearance

Polished stone or mirror finish is not permitted. Coloured lettering is not permitted save as follows:

Nabresina limestone may have the lettering picked out in contrasting matt;

Slate may have the lettering picked out in off-white matt;

Granite may have the lettering picked out in off white matt.

(v) Inscriptions

Incumbents should require an accurate design of the proposed inscription before approving an application. Photographs or representations of objects or motifs such as a child's toy are not permitted nor the use of 'pet names'. Bronze or ceramic inserts are not to be used. Badges, crests or emblems may be used provided they are seemly and appropriate for the deceased. Any representation will need to be designed so that it may be accurately cut by a skilled craftsman. Masons' or carpenters' names, signs or marks may be inscribed on any monument provided their position and appearance are unobtrusive having regard to the monument as a whole.

## (vi) Fixture

Regard must be had to health and safety concerns, and to current industry standards for the fixing of monuments safely and securely.

## HORIZONTAL LEDGERS

## (i) Size

Either flush with the turf or raised not more than 9in (225mm) above a base, extending not less than 3in (75mm) all round and itself flush with the turf; inclusive measurements not more than 7ft (2100 mm) by 3ft (900mm).

## CROSSES

An incumbent may NOT consent to the introduction of a cross, for crosses have been too freely used in burial grounds in the past. Such monuments require a high standard of design. However, the incumbent may authorise the temporary introduction of a simple wooden cross to mark a recent burial. A brass plaque bearing the name and dates of the deceased may be affixed to the cross. Such cross must be removed upon the erection of a stone memorial or after a period of 18 months, whichever be the sooner.

## PROHIBITIONS

For the avoidance of doubt, the following are not permitted:

- i. kerbs, railings, fencing or chippings;
- ii. memorials in the shape of vases, hearts, open books;
- iii. memorials incorporating photographs or portraits;
- iv. mementoes, windmills, toys or little animals;
- v. the use of 'pet names'
- vi. artificial flowers.

See also paragraphs 6.2, 6.3, 6.7, 6.10, 6.11, 6.12, 6.13.

## COMMONWEALTH WAR GRAVES

Graves of the Commonwealth War Graves Commission are marked by memorial headstones of a distinctive design and size, indicating their particular significance. The incumbent may authorise the erection of these headstones where applicable.

The incumbent is authorised to permit the installation of discreet signage provided by the Commonwealth War Graves Commission denoting the presence in the churchyard or burial ground of one or more Commission graves. The following conditions however must first be met:

- i. The installation of the sign has been the subject of an affirmative PCC resolution;
- ii. The sign is of a standard design previously recommended by the DAC or adapted to the requirements of a particular location on the advice of the DAC;
- iii. The dimensions and location of the sign have the consent of the Archdeacon who may seek the advice of the DAC as the circumstances require.

## NOTES

The Incumbent has no authority to permit the erection of a memorial which does not comply with these Regulations. Any memorial which does not comply with these Regulations (whether or not the incumbent has purported to give their authority) may be removed by order of the consistory court.

A faculty may be sought for the erection of a memorial which does not comply with these Regulations. Such petitions are actively encouraged. Each case will be considered on its individual merits and the views and policies of the Incumbent and PCC will be taken into account. The opinion of the DAC will also be sought.

Parishes are encouraged to consider adopting by faculty their own Regulations for use in a particular churchyard. Such Regulations must take into account local practice, tradition and custom and the particular environmental, architectural and aesthetic considerations of the church and its setting.

Where there is ambiguity as to whether a proposal comes within the incumbent's delegated authority, or where the incumbent is favourably disposed to the introduction of a headstone which may be just outside its scope, an application may be made by the incumbent to the Chancellor for the delegated authority to be extended so as to permit the proposal. Such applications will be considered on their merits on a case by case basis.

THE WORSHIPFUL MARK HILL QC  
Chancellor of the Diocese of Chichester

1 March 2014

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## APPENDIX II

### APPLICATION FOR INTRODUCTION OF A MEMORIAL INTO CHURCHYARD

To the Reverend.....

Rector/Vicar/Priest in Charge of the Parish of.....

I/We apply to you for permission to introduce into the churchyard known as .....  
 .....the monument described overleaf.

2. I/We have read the Churchyard Regulations issued by the Diocesan Chancellor and claim that you have power under those Regulations to permit the introduction of the proposed monument into the churchyard.
3. I/We undertake that if you grant permission the proposed monument, when erected, will conform with the description overleaf and also to indemnify you or your successors against all costs and expenses to which you or they may be put if the monument is not so erected.
4. I/We undertake for myself/ourselves and our successors to be responsible for the maintenance and stability of the monument.

Name(s) of applicant(s).....

Address(es) of applicant(s).....

Date..... Signed.....

Applicant(s)

I/We repeat paragraph 2 above and give you and your successors the same undertaking as is given by the applicant(s) in paragraph 3 above.

Date..... Signed.....

Monumental Mason

of (address).....

For use by the Incumbent or Priest in Charge

I consent / I do not consent / I consent subject to the conditions endorsed overleaf  
 (Delete as applicable)

to the introduction of the monument described overleaf into the churchyard named above.

Date..... Signature .....

Incumbent/Priest in Charge.

Overleaf

Full sketch of memorial showing ground level and height above ground level, width, depth and all other material dimensions. The sketch should also show the method of stabilising the memorial, by a ground anchor or otherwise.

Type of Stone or other Material to be used.....

Surface finish .....

Description of any carving or decoration.....

Wording of inscription

.....  
.....  
.....  
.....

Style, size and colour of lettering.....



### APPENDIX III

#### MODEL REGULATIONS FOR GARDENS OF REMEMBRANCE

1. The cremated remains of the following persons, and no others, may be interred in the garden of remembrance namely:
  - (a) persons resident in the parish;
  - (b) persons whose names are on the church electoral roll of the parish;
  - (c) persons dying in the parish;
  - (d) any other person to the interment of whose remains the incumbent consents and, in giving such consent, the incumbent shall have regard to any general guidance given by the parochial church council.
  
2. Ashes may not be buried in a container of any description. Ashes are to be poured into the ground, from the container in which they are brought to the burial site, by the minister committing them to the earth and then covered with soil.
  
3. The place of interment shall not be marked by any memorial or otherwise but the personal representatives of any person whose remains are interred in the Garden of Remembrance may, on payment of such charge as the parochial church council shall from time to time prescribe, require an appropriate entry to be made in the Book of Remembrance maintained in the church.
  
4. No artificial flowers or foliage may be laid anywhere in the Garden of Remembrance. Flowers may not be placed in vases or other containers. All flowers and wreaths placed in the plot may be removed when they are dead or wilted.
  
5. The place of interment may be used for the interment of other ashes after a lapse of 25 years, always provided that reasonable attempts shall be made by the parochial church council to enquire from members of the family of the deceased whether they object and, should such objection be made, re-use will be deferred for a further 25 years.



## APPENDIX IV

### BISHOP'S REGULATIONS FOR THE RESERVATION OF THE BLESSED SACRAMENT

1. The Bishop regards it as the right of every priest who has the cure of souls to reserve the Sacrament in his church for the better discharge of that ministry. Where it is necessary to apply for a faculty for the installation, removal or alteration of any fixed or moveable item used in connection with reservation, the Chancellor will generally expect the petition to be accompanied by a letter from the bishop particularly if it is proposed that the practice of reservation be introduced or discontinued.
2. The Sacrament must be reserved in a dignified and secure way; this means in a locked steel safe, preferably on or near the east wall of the sanctuary or a chapel of the church. The steel safe may, where practicable, be embedded in the wall; the door of the safe may be decorated with an appropriate design. Alternatively the safe may be securely fastened to the wall on metal brackets, or it may be securely fastened to a shelf embedded in the wall; the steel safe may be enclosed in a well-designed covering. Or the safe may be securely fastened to the top of a brick or stone plinth itself securely fixed in the floor.
3. There may be a white veil covering the steel safe, or a white curtain inside or outside its door.
4. The presence of the reserved Sacrament is usually indicated by a white light.
5. If a new place of reservation is to be provided this will require a faculty from the Chancellor of the Diocese. In the first instance there should be consultation with the Archdeacon and with the Diocesan Advisory Committee which will consider the architectural, archaeological and other aesthetic questions involved, and assist the parish in drawing up proposals which can be recommended to the Chancellor.
6. If an existing place of reservation is to be brought back into use, the Archdeacon must satisfy himself that it is both seemly and secure.
7. If the place of reservation is remote from an altar, a table or shelf will be needed in front of it, on which the reserved Sacrament may be placed when it is being got ready for taking to the sick, or renewed.
8. The reserved Sacrament is to be renewed every week.