

DIOCESE OF LICHFIELD
REGISTRY GUIDANCE NOTE
BURIAL OF CREMATED REMAINS IN A CLOSED CHURCHYARD

- 1) The combined effect of Church of England Miscellaneous Provisions Measure 1992 and of various legal cases appears to be that whilst not necessarily contrary to the Burial Act 1853, cremated remains can only be buried in a Closed Churchyard if this is authorised by Faculty. Such a Faculty may be either specific to the burial in question or a Faculty for the reservation of an Area for the Burial of Cremated Remains. Burial of cremated remains contrary to this legislation would be a criminal offence and it is therefore important that ministers follow the correct procedure and secure the grant of an appropriate faculty.
- 2) If the burial is to be in an area of a Closed Churchyard which has been formally set aside under a Faculty, for the burial of cremated remains, then no further Faculty is required. (A parish seeking to establish an area for the burial of cremated remains should initially consult the DAC).
- 3) However if the burial is to be in any other part of a Closed Churchyard, a specific Faculty should be applied for.
- 4) In cases where the intention is to bury cremated remains in a 'family grave', a shortened procedure is used in this Diocese. A family grave is deemed for this purpose to mean one where the person whose remains are to be buried is a son, daughter, grandson, or granddaughter of a person whose remains are already interred (whether in a coffin or as cremated remains) in the grave, or is the spouse of such son, daughter, grandson, or granddaughter. A simple draft form of petition is available on the web site (Burial of Cremated Remains: Family Grave) and it should be used in all such cases. A reduced Faculty Petition fee of £50.00 plus VAT is payable to the Registry (addressed to '*FBC Manby Bowdler LLP*') in these cases.
- 5) The intending petitioner should complete the 'family details' form on the web site so as to indicate the known descendants of the person who was originally buried in the grave. This is because the Chancellor will wish to identify whether the living relatives of the person originally buried consent to the burial. Insofar as the family members' whereabouts can now be discovered with reasonable diligence, they should be consulted, and their consent should be obtained using the 'consent' form on the web site. There is no prescribed level of 'diligence' in this regard. However if information is not readily known, the applicant should consider looking at census returns, registers of births marriages and deaths and the parish register of baptisms as well as by enquiry of the incumbent. Finding their whereabouts may be more difficult, but it should be remembered that this procedure is only available for a burial in a family grave and it would be expected that the petitioner would be aware of the family.
- 6) The intending petitioner should also consult the incumbent who should confirm that he or she and the Parochial Church Council consent to such interment. The consent of the incumbent can be provided in a simple letter. The consent of the Parochial Church Council is also required. It

can be signified by a resolution specifically as to the proposal in question or by giving general consent to interments within family graves in the Closed Churchyard.

- 7) Before passing a resolution of either type the PCC should consider whether the circumstances which led to the closure are such that the burial of additional remains might be unacceptable: such reasons might exist where the churchyard was closed on public health grounds, or where the ground is now waterlogged; but the PCC should note that any Faculty will contain conditions as to burial (since these may allay some concerns):
 - a) *Interment of the cremated remains must be in accordance with the procedure set out at paragraphs 60 – 64 of the Diocesan Churchyard Regulations with the additional requirement that the interment must not be at a depth below 300mm (1’).*
 - b) *The incumbent may permit an additional inscription to be added to an existing memorial at the site of interment in accordance with paragraph 36 of the Churchyard Regulations provided that the owner of the memorial has consented. Such permission should not be given in cases of memorials of particular historic interest. In such instances and in cases where permission is sought for an additional or replacement memorial then a faculty should be sought using a standard faculty petition.*
- 8) If all those matters are satisfactorily dealt with, then the Registry will accept the Petition and process it for consideration by the Chancellor. The Chancellor has directed that public notice of this kind of case can be dispensed with, and that he will act on the basis of the general advice given by the Diocesan Advisory Committee in July 2017. The Chancellor will direct whether a Faculty may issue.
- 9) If he is not content for any reason, then he will direct that the matter proceed as for an ordinary petition, in which case the normal fee will be payable and the Petitioner will have the option of whether to proceed or not.
- 10) Interment may also be permitted in cases falling outside the immediate scope of these provisions, for example where the relationship to the person originally buried is more distant than that described above, or indeed whether there is no relationship at all; but in such circumstances the Registrar will determine, after consultation with the Chancellor if necessary, whether the simplified procedure is appropriate or whether it will be necessary for the applicant to proceed by way of a standard faculty petition for which the normal Faculty Fees would be charged. In those circumstances, the applicant should initially consult the Registry for guidance, but will be invited to complete the Petition form entitled Burial of Cremated Remains: Non-Family Grave.

17 August 2017

Niall Blackie

Diocesan Registrar

Updated 3rd September 2020