



CORFF CYNRYCHIOLWYR YR EGLWYS YNG NGHYMRU
THE REPRESENTATIVE BODY OF THE CHURCH IN WALES

GUIDANCE TO PAROCHIAL CHURCH COUNCILS ON THE CLOSURE OF CHURCHYARDS USED AS BURIAL GROUNDS

Introduction

In the Church of England, a burial ground can only be closed for new burials if an Order in Council is made. Such an Order is made by the Ministry of Justice and the effect of such an order is to trigger maintenance to be passed to the Local Authority under the provisions of section 215 of the *Local Government Act 1972*.

In Wales, there is no duty on the Local Authority to take over the maintenance of closed burial grounds. They have the power to do so but not a duty. Consequently, it is not necessary for Church in Wales burial grounds to be closed by Order in Council as maintenance responsibility after closure still rests with the Parochial Church Council (PCC)¹.

If a Local Authority in Wales is minded to take over the maintenance of a closed burial ground (and it is always worth exploring the possibility with your local authority), it may well require that an Order in Council is obtained before doing so. The RB can advise on the process if this is the case.

Therefore, for Church in Wales burial grounds, they can be declared closed by resolution of the Parochial Church Council. This guidance note sets out the considerations that the PCC needs to make in considering the closure of the burial ground to new burials.

The Right to be Buried

There is a common law right for a deceased person who lived or died in the parish to be buried in the Anglican church burial ground for that parish provided there is space. This right was re-affirmed by the *Welsh Church (Burial Grounds) Act 1945*.

Thus, if a PCC decides to close a burial ground to new burials and there is still space for new burials, the PCC could be subject to legal challenge. For this reason, the PCC should consider the issue of closure carefully and this note sets out the key criteria to consider following the principles of the Order in Council process.

¹ The term "Parochial Church Council" is used within this document to describe the local church trustee body responsible for the management of the burial ground. These bodies may also be known as the Ministry Area Council, the Local Ministry Area Council, Rectorial Benefice Council, Mission Area Conference, or any other term designated by diocesan policies.

NB Closing a burial ground simply because the PCC no longer wishes to have the task of administering burials is not a sufficient basis to close.

Definition of Closure of a Burial Ground

Closure means that no further new graves will be opened. Burials in existing graves (including plots reserved by faculty), walled graves, vaults or mausolea (if there is space) for family members would remain possible. The interment of cremated remains is still permissible provided a faculty has been granted for the interment area (see Section 13 of the *Regulations for the Administration of Churchyards Vested in the Representative Body of the Church in Wales*).

Criteria for Closure of a Burial Ground

There are four key criteria to consider when closing a burial ground. Any one of these can be sufficient reason for the PCC to declare the burial ground closed:

1. There is no proper room for new graves.
2. Further burials would be contrary to decency.
3. Discontinuance of burials would prevent or mitigate nuisance.
4. Further burials would constitute a health risk.

Criteria 1 is likely to be the most common basis for a decision to close. The others are harder to define precisely or would need highly specialised input to assess.

Criteria 1 applies where the burial ground is full and there is no further usable land where graves could be made, for example, where the land is too steep, waterlogged or has insufficient depth to be used. It would also apply where use would unreasonably encroach on or interfere with existing buildings, paths or structures.

It is not possible to close part of the burial ground on the basis that that part is full. This is because any burial rights could and should continue to be exercised in any remaining part of the burial ground.

Suggested Process for Closing a Burial Ground to new Burials

Step 1

Review the criteria above and decide which best applies to your situation. Gather evidence to justify why the criteria would apply. This might include:

- Check with the Representative Body (RB) as to the precise ownership of your burial ground. Sometimes, areas of burial ground are owned by the local Council. The RB will provide a Land Registry plan or other evidence. This is a chance to also check your boundaries for any encroachments or anomalies.
- Ground survey information to assess suitability for burials. Funeral directors and grave diggers may be able to help with this work.
- A map showing the whole burial ground and all existing graves with annotations showing the limitations for further burials.

- If you are relying on health risk grounds, you will need a specialist report assessing the health risks associated with further burials.
- If you believe a nuisance might exist you would need some legal assessment of this backed up by specialist reports. Typically, this might be issues of polluting ground water.

The key point is that you should make the decision based on objective fact rather than prejudice or pre-conceived beliefs.

Step 2

Discuss the evidence with your PCC. If they believe the closure is justified, they should make a provisional resolution to close the burial ground to new burials subject to further consultation.

Step 3

Consult your local community informally. You should bring the proposal to the attention of local parishioners and invite any comments. Consultation might take the form of public notices, notification to the Community or Town Council, community newsletters etc. The consultation should give sufficient evidence of the basis on which the closure is proposed. A contact address and deadline for comments should be provided on any publicity. Consultation should make it clear that closure is only for new graves.

The consultation is also an opportunity to discuss within the community how the future maintenance of the burial ground will be arranged and funded.

Step 4

The PCC should review the comments received and consider them carefully. Some comments may be based on emotion rather than objective fact. The comments should be assessed against the criteria set out above to help decide if the decision to close is still reasonable. You might also discuss this with your Archdeacon and/or the RB for reassurance that your decision to close appears reasonable and in accordance with this guidance.

Step 5

Assuming the consultation does not bring forward evidence that suggests the proposed closure basis is not correct, the PCC should then make a final resolution to close for new burials. A form of resolution is attached at Appendix I.

Step 6

The completed resolution should be safely archived in the PCC's records and a copy sent to the Diocesan Registrar and the RB.

Note on creating new burial grounds

The local consultation process may give to demands to open additional burial ground on church or other land. It is the policy of the RB to discourage parishes from assuming responsibility for new or extended burial grounds (which should lie with the local burial authority i.e. the Community Council, Town Council or Local Authority) unless the RB (in

whom such grounds would be vested) is satisfied that adequate financial support is provided for the acquisition and maintenance of the proposed burial grounds or extensions. NB Use of church land, such as glebe, would need to be acquired at market value given the terms of trust of that asset.

Any land proposed as a new burial ground would also need planning permission for change of use and this is likely to require extensive ground condition and drainage surveys. Specialist advice would be needed.

Appendix I - PCC Resolution to Close a Burial Ground to New Burials

Name of PCC: _____

Contact address for PCC Secretary: _____

Name of Burial Ground: _____

Having duly considered the matter of burial space within the above burial ground, the PCC hereby resolves that the above burial ground, as shown edged red on the attached plan, should be closed to new burials.

This resolution is made following careful analysis of the physical nature of the burial ground leading to the conclusion that the burial ground should be closed on the basis that*:

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

* *delete those that do not apply.*

Furthermore, this resolution is made following local consultation on the proposal on the following dates: _____.

The PCC confirms that burials in existing graves (including plots reserved by faculty), walled graves, vaults or mausolea for family members will continue, if there is space. The interment of cremated remains will continue in the area designated by faculty for such interments and shown on the attached plan.

Furthermore, the PCC confirms it will continue to be responsible for the management and maintenance of the burial ground.

SIGNED

Chair of PCC: _____

Churchwarden: _____

Churchwarden: _____

Date of meeting where this resolution was passed: _____