

GENERAL SYNOD

LEGAL ADVISORY COMMISSION

Burial and cremation: funerals in undertakers' private chapels

1. There are a number of statutory provisions with respect to services taken outside a church or churchyard¹. In certain circumstances an incumbent is under an *obligation* to perform funeral services in the consecrated part of a public cemetery (see article 17(1) of the Local Authorities' Cemeteries Order 1977, SI 1977/204). Although there is no corresponding provision in respect of local authority crematoria, the Church of England (Miscellaneous Provisions) Measure 1992, section 2, confers certain rights, and imposes certain *obligations*, on ministers concerning the conduct of funeral services there (see **Burial and cremation**). In so far as the unconsecrated parts of cemeteries are concerned, section 12 of the Burial Laws Amendment Act 1880 provides that a minister of the Church of England shall not be liable to any censure for officiating at a burial service according to the rites of the Church of England 'in any unconsecrated ground or cemetery ... or in any building thereon, in any case in which he might have lawfully used the same service, if such burial ground ... had been consecrated'. However, this latter provision did no more than to give statutory confirmation to the law as previously set out in *Rugg v Kingsmill* (1867) LR 1 A & E 343 (on appeal (1868) LR 2 PC 59).
2. None of these statutory provisions relate to the case of an undertaker's chapel, which at least in the past was seen as essentially a place provided as a resting place for the corpse and its 'viewing' by relatives and friends, and which is neither a church nor a building on a burial ground or within the boundaries of a crematorium. Nevertheless, there is a growing demand for funeral services to be conducted in such chapels before bodies are taken to the crematorium or cemetery; this may in part be due to the limited time often allotted to individual services at busy crematoria. As these chapels are not private chapels with their own Anglican ministers (see 34 *Halsbury's Laws of England* (5th ed, 2011) at paragraph 992), the provisions of Canon B 41 do not apply to them.
3. In the light of *Rugg v Kingsmill* it is the Commission's view that it is lawful for an Anglican minister to use one of the burial rites in the BCP, *Alternative Services: Series One* or *Common Worship* at an undertaker's chapel. However, before conducting any such service the minister must obtain permission to do so from the incumbent of the parish in which the chapel is situated. The minister may in his or her discretion make and use variations to such a service as long as they are not of

¹ In proprietary cemeteries with consecrated ground the company may appoint an Anglican chaplain (Cemeteries Clauses Act 1847, section 27, as amended by the Church of England (Miscellaneous Provisions) Measure 1992, Sch 3, paragraph 1).

substantial importance and are reverent and seemly and are not contrary to the doctrine of the Church of England in any essential matter: see Canon B 5, paragraphs 1 & 3. Alternatively, if a service is required that is not related to a funeral rite (or a committal), the minister having the cure of souls may use a form of service considered suitable for the occasion by him or her; he or she may also permit another minister to use that service: Canon B 5, paragraph 2.

4. No statutory fees are currently (2017) payable for any service taken in an undertaker's chapel but care should be taken to ascertain the position in the future². The usual fees are chargeable³ for a subsequent burial of the body in a churchyard and for any burial of cremated remains in a churchyard or other lawful disposal of those remains⁴: Ecclesiastical Fees Measure 1978, Sch. 1A, Pt I.

² As to what charges may be made in such circumstances, see *A Guide to Church of England Parochial Fees* (January 2015) at paragraph 26.

³ No fees are chargeable for the burial of a still born infant or of a child under the age of 16: Ecclesiastical Fees Measure 1978, Sch. 1A, Pt II, note 2.

⁴ It is unlawful for an Anglican minister to scatter (as opposed to strewing) cremated remains as to do so is irreverent: see Canon B 38, paragraph 4(b); see, too, the resolutions adopted by the Convocation of Canterbury on the 25th and 26th May, 1943, and by the Convocation of York on the 23rd May 1951 (*Acts of the Convocations of Canterbury and York 1921-1970* (SPCK, 1971) at pp 98-101).