

GENERAL SYNOD

Private Member's Motion: Canon B 38
Canon law in relation to the funerals of those who have taken their own life

A background note from the Secretary General

1. Anyone who is resident in a parish or who dies in a parish has the common law right of burial of his or her body in the churchyard or other consecrated burial ground of that parish (unless it has been closed by Order in Council). The right has been extended by statute to all those whose names are on the electoral roll at the time of death.
2. The minister with cure of souls has a corresponding duty to officiate at the burial of all such persons. The general rule is that no body may be buried in consecrated ground without the burial service being performed.
3. Under the pre-Reformation canon law certain persons were refused Christian burial. They included –
 - those who took their own lives while of sound mind,
 - the excommunicate and
 - the unbaptized.

Those canonical provisions continued in force in England after the Reformation and are recognized in the rubric at the beginning of the burial service in the Book of Common Prayer ('BCP').

4. The legal position was altered in the nineteenth century. The Burial Laws Amendment Act 1880 allowed the minister to use a service "*consisting of prayers taken from the Book of Common Prayer and portions of Holy Scripture*" prescribed or approved by the Ordinary in circumstances where the Burial Service in the BCP could not be used. The 1880 Act therefore enabled a form of Christian service to be used at the burial of a person who had committed suicide while of sound mind.
5. In 1882 the Interments (felo de se) Act 1882 (the Latin term meaning 'felon of himself') made it lawful for the body of a person who, being of sound mind, had committed suicide to be buried in a churchyard. But it remained unlawful to use the Burial Service itself: a special form of service prescribed or approved under the 1880 Act had to be used.
6. In the twentieth century, the Prayer Book (Further Provisions) Measure 1968 removed the requirement that the service used by the minister must consist of prayers taken from the Book of Common Prayer. Instead it provided for the approval of a special form of service for the burial of suicides to be approved by the Convocations. This has now been superseded by the Church of England (Worship and Doctrine) Measure 1974 which provides for the approval of forms of service by the General Synod.
7. Canon B 38 (the complete text of which appears at the end of this note) therefore reflects the current canonical and legal position. In summary, it is the minister's duty to bury any deceased parishioner, including a person who has taken his own life while of sound mind, a person who is excommunicate, or a person who is unbaptized. But the law provides that, instead of using the normal funeral service (whether from the BCP or Common Worship) the minister

"shall use at the burial such service as may be prescribed or approved by the Ordinary, being a service neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter: Provided that, if a form of service available for

the burial of suicides is approved by the General Synod under Canon B 2, that service shall be used where applicable". (Canon B 38, paragraph 2)

8. As Canon Parsons' background note suggests this distinction appears in practice to be honoured more in the breach than in the observance. Clergy do not generally ask the bereaved whether the deceased was baptised and even where suicide is suspected or confirmed many clergy will use the normal burial service with few if any modifications. Moreover, despite the fact that *provision* has been in place since 1968 for the approval of a form of service for use where a person has taken their own life while of sound mind (and in relation to the unbaptized and the excommunicate), no such service has been *approved* either by the Convocations or by the General Synod. The responsibility for prescribing or approving forms of service for such use (either generally or on an individual basis) therefore rests with the Bishop or other ordinary.

Revisions to the Church of England's funeral services

9. The traditional refusal of Christian burial to suicides expressed in the rubric to the BCP Burial Service reflected the belief that all suicide was a grave sin. Public attitudes changed markedly by the second half of the last century, however, as understandings in mental health developed. A significant report from the Church of England's Board for Social Responsibility, published in 1959 noted that the approach in society at large was now that "*A person who attempts suicide must be in a state of mental distress and therefore needs special sympathy and understanding*," and endorsed such a shift of attitude.¹
10. This viewpoint was reflected in the Suicide Act of 1961, which abolished the offence of suicide, while also introducing a new offence of assisting a suicide. The 1959 report proposed that an alternative form of service be approved for use in the case of those who might be deemed to have been "of sound mind" in taking their own life. It closely followed the structure of the Burial Service in the BCP but made some changes aimed at accenting the penitential character of the service, not least in the final prayers.
11. Although this recommendation was favourably received in the Convocations in 1962, the Liturgical Commission, to whom the task of producing a text for approval was referred, decided that it would be better to produce a new funeral service that would be designated through an introductory rubric as suitable for the burial of all baptized persons, including suicides, with specific prayers provided for these circumstances.² It was never authorized as part of the Series 2 provision, and the services subsequently published in Series 3 and the Alternative Service Book took a different approach, with the Liturgical Commission affirming its intention that "*one burial service should suffice for all baptized persons (including suicides); but an exception should be made in the case of burying children*", but not including any rubric to this effect.³
12. The provision for funeral rites in Common Worship moved beyond the Alternative Service Book by including prayers specifically for 'after a suicide' within a section of *Common Worship: Pastoral Services*. This was commended by the House of Bishops and the text of the funeral service itself was authorized through General Synod. But again, no form of service for use at the funeral of a person who had committed suicide while of sound mind was brought forward for approval by the General Synod.

¹ Board for Social Responsibility, *Ought Suicide to Be a Crime? A discussion of suicide, attempted suicide and the law* (CIO 1959), p. 20.

² The Church of England Liturgical Commission, *The Burial of the Dead and Commemoration of the Faithful Departed* (SPCK 1967), pp. 14–15.

³ *Funeral Services – Series 3: Report of the Revision Committee* (GS 147Y).

‘The unbaptized’ and persons ‘who have been declared excommunicate’

13. As noted earlier, Canon B 38 identifies these two other categories of people for whom Christian burial should not, in law, involve the normal prescribed funeral service..
14. The Alternative Service Book did, however, include ‘Prayers after the birth of a still-born child or the death of new-born child’ and within *Common Worship: Pastoral Services*, there is a ‘Theological Note on the Funeral of a Child Dying near the Time of its Birth’ following the section on ‘Resources for Funeral for a Child’, in which it is clearly assumed that in many such cases the child will not be baptized (pp. 316–17). So the Church has already formally acknowledged circumstances in which the normal funeral service may be used for the unbaptized.
15. And as already noted, it is not contemporary pastoral practice for clergy generally to inquire whether the deceased was baptised. So, even though some two thirds of infants born in the middle of the last century were baptised, it is highly likely that a significant proportion of the at least 3,300 funerals conducted each week by an Anglican minister, using the normal funeral service, are for those who were not baptised.
16. As to persons ‘who have been declared excommunicate for some grievous and notorious crime’, since 1st March 1965 (when the Ecclesiastical Jurisdiction Measure 1963 came into force) there has no longer been any legal machinery for declaring a person to be excommunicate. The reference in Canon B 38 to such persons is therefore probably of little practical purpose.

Liturgical provision, pastoral practice and changes to Canon Law

17. There is clearly, therefore, some tension between, on the one hand, Canon Law as expressed in Canon B 38, and, on the other, the expectations about the use of funeral rites conveyed within contemporary Church of England liturgical provision and normal pastoral practice across the breadth of the Church of England and indeed other Christian Churches in this country, including the Roman Catholic Church.⁴
18. The motion to be moved by Canon Parsons seeks to address this tension, in relation to death by suicide, by a change to Canon Law so that the burial service in the BCP or the funeral service in Common Worship could be used in the case of those who have taken their own life while “of sound mind”.
19. If the canonical position were to be changed in the manner proposed by Canon Parsons a number of questions would need to be addressed. These would include—
 - whether the minister would be under a duty to use one of those two services in the case of such a person or should have a discretion as to whether to do so (or at least an opt out on grounds of conscience) in which case the minister could use another more standard form of service;
 - whether the position in relation to the unbaptized should be similarly changed or whether different questions arise in such cases.
20. If the Synod were to ask for legislation to be introduced to amend Canon B 38, the question would also arise as to whether that could be achieved simply by means of a Canon made under section 1(1)(b) of the Church of England (Worship and Doctrine) Measure 1974 or whether it would be necessary for the Synod to pass a Measure which specifically authorised the making of an amending canon with the desired effect.

⁴ Roman Catholic Canon Law no longer forbids the burial of those who take their own lives; see Canon 1184.

21. Further work would need to be done on whether provision made by Canon under the 1974 Measure could have the effect of changing the law as set out in the rubric in the Book of Common Prayer.
22. Were the legislation to take the form of a Canon under the 1974 Measure, it would require a majority of two-thirds of those present and voting in each House at Final Approval Stage. Were a Measure to be needed, a special majority would not be necessary for the amending canon made under it unless the Measure required it.

William Fittall
Secretary General

22 October 2014

Canon B 38 Of the burial of the dead

1. In all matters pertaining to the burial of the dead every minister shall observe the law from time to time in force in relation thereto, and, subject to this paragraph in general, the following paragraphs of this Canon shall be obeyed.
2. It shall be the duty of every minister to bury, according to the rites of the Church of England, the corpse or ashes of any person deceased within his cure or of any parishioners or persons whose names are entered on the church electoral roll of his parish whether deceased within his cure or elsewhere that is brought to a church or burial ground or cemetery under his control in which the burial or interment of such corpse or ashes may lawfully be effected, due notice being given; except the person deceased have died unbaptized, or being of sound mind have laid violent hands upon himself, or have been declared excommunicate for some grievous and notorious crime and no man to testify to his repentance; in which case and in any other case at the request of the relative, friend, or legal representative having charge of or being responsible for the burial he shall use at the burial such service as may be prescribed or approved by the Ordinary, being a service neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter: Provided that, if a form of service available for the burial of suicides is approved by the General Synod under Canon B 2, that service shall be used where applicable instead of the aforesaid service prescribed or approved by the Ordinary, unless the person having charge or being responsible for the burial otherwise requests.
3. Cremation of a dead body is lawful in connection with Christian burial.
4. (a) When a body is to be cremated, the burial service may precede, accompany, or follow the cremation; and may be held either in the church or at the crematorium.
(b) The ashes of a cremated body should be reverently disposed of by a minister in a churchyard or other burial ground in accordance with section 3 of the Church of England (Miscellaneous Provisions) Measure 1992 or on an area of land designated by the bishop for the purpose of this sub-paragraph or at sea.
5. When a body is to be buried according to the rites of the Church of England in any unconsecrated ground, the officiating minister, on coming to the grave, shall first bless the same.
6. If any doubts shall arise whether any person deceased may be buried according to the rites of the Church of England, the minister shall refer the matter to the bishop and obey his order and direction.
7. A funeral service at a crematorium or cemetery shall be performed only in accordance with directions given by the bishop.