

DAC ANNUAL CONFERENCE 2022

Churchyard Regulations

HH Canon Peter Collier KC

Churchyard Regulations – a short history (1)

“.. and it was said by Lord Stowell (*1 Hagg. Cons, 207*) “There can be no question as to this, that **no monument can be erected without the leave of the ordinary. It is to his care that the fabric of the church has been committed**; and it is not to be defaced at the caprice of individuals.”. It is also stated in the books that the consent of the parson is necessary to the erection of monuments in the church” ...

... That which we before said as to the right of the rector to oppose the erection of monuments in the church, after a faculty obtained from the ordinary, and as to the respective rights of the rector and the ordinary in such cases, would, it is conceived, be **equally applicable to the case of monuments or tombstones in the churchyard.**

Cripps (1845)

In *Maidman v. Malpas* 1 Consist. p. 205

A faculty likewise is required, though it is frequently omitted, under the confidence reposed in the minister, and the ecclesiastical court is not eager to interpose.

In practice the ordinary’s rights were exercised through the **annual visitations**

Churchyard Regulations – a short history (2)

Churchyards Commission Report 1954

Parishioners have a right of burial, but there is no right to have a monument erected. Strictly a faculty is required, but it is generally recognised that if the incumbent's permission is obtained that is sufficient. He can refuse permission either generally or in relation to a specific type of monument, but any person who is aggrieved by a refusal can apply for a faculty.

Churchyard Regulations

Appendix 1 - Model Churchyard Regulations

3. The chancellor of the diocese is the legal authority for all monuments in churchyards, the incumbent acts by permission as his deputy to this extent by custom.
4. The incumbent may sanction the placing of memorial monuments provided that (various provisions as to size, material etc).
5. A request for any permanent memorial which is not included under Regulation 4, will be referred by the incumbent to the chancellor for his ruling.

Model Churchyard Regulations – para 4

- Headstones do not exceed 3 ft 0 in in height
- Stone slabs designed to lie flat over the grave are flush with the grass so that a mower can pass over them
- Small Crosses, do not exceed 4 ft 0 in in height. (But Crosses carved on the faces of headstones are preferable.)
- All memorials shall be of natural stone quarried in Great Britain or of English oak.
- Kerbs or railings enclosing grave-spaces will not be permitted save by special permission of the Chancellor
- All designs, measurements, foundations, and inscriptions on monuments shall be submitted to, and approved by, the Incumbent in writing, **before the order for them is given**. The inscription must be set out to show the style of lettering.

Churchyard Regulations – a short history (3)

Re Woldingham Churchyard [1957] 2 All E.R. 323

It must be emphasized that, strictly speaking, only this court can give permission for the erection of a tomb- stone in a churchyard, though in most cases the chancellor is content to delegate to the incumbent his authority to grant permission for the erection of an ordinary tombstone and to dispense with the need for a faculty.

Re Exhall, St Giles [2021] EACC 1

In principle, the introduction of any item into a consecrated Church of England churchyard requires a faculty but it is conventional for Chancellors to make schemes of delegation, usually by means of what are termed “Churchyard Regulations”, although they have no legislative status.

Newsom - 1993

- **Appendix III – Schedule A**

- Max size 1200 x 900 x 150 mm (gives metric and imperial sizes)
- Min size 750 x 500 x 75
- Base details
- Shape – simple
- Materials – natural wood, natural stone (local materials preferred)
- Prohibited – various granite, white marble, mirror reflection
- Prohibited – pictures, photographs; chippings, kerbs etc

40 sets of Regs (none in London or Europe)

Each diocese now has such regulations

Generally “regulations” although some “Rules” or “Guidance”

Vary in length

Shortest – 2 pages – Durham and Bath & Wells

Longest – 36 pages – Manchester and Carlisle

Vary in content

Just memorial regulations

Law on various issues eg reservation and exhumation

General guidance

Some questions

- Why does Birmingham allow taller but narrower max 1250x650x110
- Why does Salisbury allow up to 1500 x 900
- Why is Chelmsford smaller max 1070 x 760 x 102
- Why do some have minor variations – 1220, 1250, even 1228 (?typo)
- Base sizes confusing – picture/diagram helps
- Two vases in a base or one
- BS 8415 and/or NAAM Code of Practice
- Minimum distance from church wall – very few, very varied
- Definition of wood and stone types allowed
- Reconstituted stone (BS 6457 has been withdrawn)

Looking ahead

“Gatekeeper” rather than “deputy”

Focus on one document that deals with the “regulations”

Separate off:

- Explanation of churchyard law

- General advice on churchyards

- Bereaved family guidance document