

## E1 THE FACULTY JURISDICTION

### **What is a Faculty?**

The chancellor, as the bishop's and archdeacons' officer, preserves and protects church property by granting or withholding a faculty, thus preserving our heritage for future generations.

### **Scope of the Jurisdiction**

The jurisdiction to grant or withhold a faculty extends to the fabric and contents of every consecrated church and to every chapel licensed on or after 1 March 1993 or which is otherwise brought within the jurisdiction by an 'Order of the Bishop'. "Contents", as distinct from the fabric, includes all goods and fixtures in or about a church (e.g. organs, bells, plate, pews, lecterns, processional crosses, altar frontals, heating apparatus or candlesticks), together with all goods which have been removed from a church for repair, safe custody or the like. Without authority, no new contents may be introduced, whether they are bought or given, nor may any existing contents be disposed of by gift or sale. A person who acquires goods of a church, save as authorised by faculty, obtains no legal title to them. The jurisdiction extends to every consecrated burial ground, whether adjacent to a church or not and whether or not closed for future burials and to the curtilage, of every church within the jurisdiction and to everything in such areas.

### **Faculties**

Unless work is exempted from a faculty (see below) the authority necessary for each item of work to be done is given by the Bishop's Consistory Court, of which the chancellor is the judge. His order allowing work to be done is called a faculty. Under current legislation power has been delegated to archdeacons to grant faculties for specified areas of works / purposes. An application for an archdeacon's faculty is made in exactly the same way as for a chancellor's faculty.

### **Advice**

The chancellor and the archdeacons use their authority to ensure that work is done only with qualified advice. Besides architects and other experts employed and paid by a Parochial Church Council, every parish is now required by legislation to seek the advice (without charge), of the Diocesan Advisory Committee. The advice of this committee is at its most useful if it is given early, while the proposals for any given action are still fluid.

### **Fees**

Fees can be levied in respect of all applications to and work of the Consistory Court. However, in this diocese they are not normally collected for any normal unopposed application by the PCC to do work. Fees can, however, be collected in respect of all cases where work is done without leave so that its results have to be legalised by confirmatory faculty, or where the application is made by a private person or body, for some individual privilege, or when a hearing in Court or Chambers is necessary. Further, if excessive work is made for the Registry due to failure to comply with the provisions of legislation, the Chancellor may require the parish to pay some or all of the statutory fees including an increased correspondence fee for the Registry. Fees are collected in respect of opposed cases. In the past, fears of incurring fees have deterred parish authorities from applying for diocesan advice and authority in cases where work is to be done to a church or its contents. There is no longer any basis whatever for these fears in a normal case where

the application is made before the work is done and where consultation with the archdeacon and Diocesan Advisory Committee has been conducted from the earliest stage of the case. On the contrary, full consultation is the surest protection against fees.

### **Responsibilities of the Various Officers in a Parish**

The fabric of a church and the soil of a churchyard or church curtilage are usually vested at law in the incumbent as freeholder.

The goods of a church, whether physically in the church or not, are usually vested in the churchwardens.

The Parochial Church Council is responsible for maintaining the fabric of the church and caring for its goods, its churchyard and its curtilage.

The churchwardens are the officers of the bishop in the parish and they are therefore personally responsible to the chancellor as the bishop's representative in these matters, for seeing that nothing is done unlawfully. They must in no circumstances take part in, or connive at, evasions of the faculty jurisdiction.

### **Minor Work not Requiring a Faculty (also known as De Minimis)**

The chancellor has issued a clear guidance paper (see below) of matters which may be categorised as 'minor works'.

Temporary rearrangements of the furnishings of a church may be made with the authority of the archdeacon's licence which is to state the period (not exceeding 13 months) during which the rearrangement may continue. The archdeacon is to notify the Registry. This provision deals among other things with experimental rearrangements enabling the parish to decide whether to apply for a faculty to make permanent rearrangements in view of changing liturgical ideas.

Tombstones may in certain circumstances be introduced into a churchyard on the authority of the incumbent (or team vicar) or priest in charge, or if the benefice is vacant, the rural dean.

In matters of emergency, the chancellor may give authority by issuing an emergency order. The situation is formalised later by faculty. The chancellor should be approached through the registrar.

In all other cases whatsoever, a faculty is required.

### **The Archdeacon, the Secretary of the Diocesan Advisory Committee and the Registry**

Whenever a parish begins to contemplate alterations to a church, churchyard, church curtilage or church goods, or additions or sales of such goods, they should informally discuss this either with the archdeacon, the secretary of the Diocesan Advisory Committee or the registrar. Whichever of these officers they approach will give advice as to how to proceed further and how the other officers concerned are to be kept in touch with what is proposed. It is especially important that qualified technical advice is obtained at this early

stage.

### **Tombstones**

The chancellor has, delegated to an incumbent or team vicar, a priest in charge or rural dean, the power to grant authority for the introduction of tombstones or other monuments, strictly in accordance with set specifications and terms. Permissions of this sort are valid only if they are given in writing, in duplicate, on the form prescribed and are within the terms of the delegated authority.

Further details together with the Churchyard Rules, which are mandatory in this diocese, have been circulated and widely advertised in the diocese: they are appended to this section as Annex 2, they are also known to all stonemasons who operate in the diocese, and to the National Association of Master Masons. Further copies are available from the Diocesan Registry and Churchgates House.

### **Petitions for Faculties**

The DAC may be approached for preliminary informal advice at an early stage in the process, which may continue if required until proposals are finalised. In every case the formal advice of the DAC must be sought before the petition is considered by the chancellor (or archdeacon). In this diocese an application for the formal advice of the DAC and the petition papers are completed and lodged at the same time. The completed forms should be returned to the DAC c/o Churchgates House. The same forms will later be considered by the chancellor or archdeacon.

Some sorts of proposal tend to cause controversy within a parish, e.g. rearrangements of the internal furnishings of a church. The chancellor emphasises the need for very complete explanations and consultations throughout the parish and not merely within the circle of the Parochial Church Council, still less its Standing Committee. Wherever this sort of controversy appears to be rising, the incumbent should at once consult the archdeacon.

Faculties for the sale of church valuables are not easy to obtain and are subject to special considerations. The parish should consult the registrar at the very outset as to the legal issues, as well as consulting the archdeacon and the Diocesan Advisory Committee about the proposals. If there is no faculty, a purchaser or donee obtains no title to the objects which they acquire.

The chancellor hopes that if the arrangements outlined above are followed, there will seldom be a need for faculty proceedings to be heard in open court. The instructions and advice which are set out above are designed to ensure full consultation and adequate advice and so to avoid controversy. The Church has a duty to maintain its buildings and goods; but these things are only the material framework for its real work, and the more that these matters can be dealt with uncontroversially, the better.

### **Enforcements**

Each churchwarden is the officer of the bishop in the parish and therefore has a duty to see that the law is observed in his parish. He should report promptly to the chancellor, through the registrar, or to the archdeacon, all that is done amiss and should consult one of these officers if anything seems to him to be on the point of being done irregularly.

Whenever a mistake is discovered the incumbent and churchwardens should at once petition for a confirmatory faculty authorising what has been done. They should make a full disclosure of the circumstances in which the mistake came to be made. Such faculties are granted if the mistake turns out to have been made in good faith and without carelessness, but the full statutory fees may be collected.

If work is done without authority and if no confirmatory faculty is granted, the chancellor has power to order that work be undone at the cost of those responsible for doing the work (including contractors) and to make the culprits pay all the costs of the remedial work, as well as the legal proceeding. He will not hesitate to exercise this power in a proper case!

The diocese has published a Churches and Churchyards Handbook which contains further information.

2005

**Annex 1: Minor matters for which a faculty is not needed as authorised by the chancellor of the Diocese of St Edmundsbury & Ipswich**

1. Cruets
2. Vases and flower stands
3. Kneelers, hassocks and cushions (but not where a substantial replacement of hassocks is intended over a period of time)
4. Furniture in church halls
5. Authorised service books
6. Hymn books, song books, bibles and choir and organ music (but not disposal of hand bound or other valuable books)
7. Altar linen (but not altar frontal or falls)
8. Movable hymn boards
9. Fire extinguishers (subject to archdeacon's instructions as to location in the church)
10. Decorative banners used for displays not lasting more than three months
11. Works of routine maintenance of electrical fittings (by approved NICEIC electricians) or other equipment and furniture
12. Works of routine maintenance on the fabric of a church (see below)
13. Replacement of ordinary carpets or curtains (in the same material)
14. Introduction of a small movable bookcase no larger than 100cm x 200cm x 30cm or display stands
15. Maintenance of paths not amounting to full re-surfacing
16. Maintenance of pianos using matching materials
17. Tuning of organs and tuning and adjustment of harmoniums and pianos
18. Inspection and routine maintenance of bells and bell frames, clocks and clock faces
19. Replacement of wooden bell stays and routine works involving bells and bell ropes
20. Lawnmowers and other churchyard equipment
21. Surplices, albs, cassocks, choir robes and vergers' robes

22. Introduction of registers and deposit thereof in diocesan record offices
23. Routine repair and maintenance of silver plate subject to prior consultation with the archdeacon and the archdeacon's written consent being given prior to such work being undertaken
24. Introduction of bat boxes
25. Security marking of movables with UV pen and other invisible security marking
26. Money collecting boxes and lock-safe in the vestry providing that the same are not built into the fabric
27. Lopping of branches of trees within the churchyard where branches are less than 10cms in diameter providing that the local authority gives it consent
28. Removal of dead trees or the dead branches of trees providing that the local authority gives its consent
29. Work to trees where their roots are interfering with buildings, graves, walls or other structures in the churchyard providing that the local authority gives its consent.
30. Such other matters as may from time to time be added by the chancellor after consultation with the diocesan Advisory Committee

Notes

- 1 *A matter not on this list will require a faculty from either the chancellor or the archdeacon*
- 2 *No item should be disposed of without consultation with the archdeacon*
- 3 *Definition of maintenance: To repair an item using exactly the same materials as the original – to retain its originality*
- 4 **IF YOU HAVE ANY DOUBT ABOUT A MATTER, CONSULT YOUR ARCHDEACON**

## ANNEX 1 CHURCHYARD RULES

### PART I

- 1 I Nothing shall be erected or placed, and no work shall be done, in the churchyard without the consent of the Chancellor of the Diocese or of the Incumbent (including Priest in Charge) of the Parish acting within the authority delegated to him/her by the Chancellor. The extent of that authority is set out in Part II below. Where there is a Vacancy the permission of the Rural Dean should be obtained.
- II Any consent given by the Incumbent shall be in writing. Any consent given by the Chancellor will normally be by Faculty and will always be in writing.
- III Every application for consent shall be made in the first instance to the Incumbent on the form prescribed by the Chancellor. The application shall be accompanied by a cheque to cover the appropriate fee. If the application is not within his/her power to grant, or if he/she does not think fit to grant it, he/she will inform the applicant, who may then apply to the Registrar of the Diocese with a view to petitioning the Chancellor for a Faculty.
- IV No action shall be taken in respect of any such application until a faculty or consent has actually been given.

### PART II INTRODUCTION OF MONUMENTS etc

- 2 The Chancellor has delegated to the Incumbent power within his/her sole discretion to permit the introduction into his churchyard of monuments falling within the following provisions:-
  - I The Chancellor has delegated to the Incumbent power within his/her sole discretion to permit the introduction into his churchyard of monuments falling within the following provisions:-
    - II.A A base forming an integral part of the design of a headstone is permitted. It shall be properly secured to the headstone, preferably by two non-ferrous metal dowels, and these should be at least 100mm (4ins) in length. All joints should be firmly fixed. The base shall not project more than 50mm (2ins) beyond the headstone in any direction (except where a vase is incorporated when the base may extend a maximum of 200mm (8ins) in front of the headstone). The base shall itself be fixed on a foundation slab (which may be reinforced concrete) which should be positioned just below the turf so that a mower may pass freely over it. The foundation slab shall extend beyond the base by between 75 to 124mm (3 and 5 ins) all round.
    - B For free standing memorials the headstone should be set in the soil, to a minimum depth of 381mm (15 ins) or, alternatively, the stone should be fixed using two jockey blocks at least 381mm x 152mm x 76mm (15ins x 6ins x 3ins) set below ground level.
    - III Natural stone vases which are permitted shall be not more than 300 x 200 x 200mm (12ins x 8ins x 8ins) in size. A vase may be incorporated into the base of the headstone. Glass containers are prohibited
    - IV **Memorials for Young Children**  
Representations have been made to the Chancellor that in some cases the size of these memorials might be reduced to below the minimum dimensions contained in the Churchyard rules set out above. For pastoral reasons he is sympathetic to those

representations although he is also concerned that memorials should be large enough to be easily seen so that they are not damaged inadvertently and that they should be strong enough to survive accidental knocks. He therefore delegates to an incumbent power within his sole discretion to permit the introduction into his churchyard of a simple memorial for a young child with a minimum size of 460mm high x 300mm wide x 75mm thick (1ft 6ins x 1ft x 3ins) This discretion may be exercised in respect of memorials to young children who have died under the age of 10 years.

**V Cremated Remains**

A The burial of cremated remains may, subject to b. below, be commemorated by tablets or plaques (including wedge shaped tablets) not exceeding 535mm (1ft 9ins) square. A vase may be incorporated into the tablet. Such tablets or plaques may be upright or flush with the turf.

B Where a part of the churchyard has been specially set aside by Faculty for the burial of cremated remains, no tablet, plaque, monument or vase shall be introduced into that area except in accordance with the terms of the faculty setting the area apart.

VI Monuments shall be of natural stone (including slate and grey granite) but not black, red or Scottish granite, or marble, which are prohibited. Monuments may also be of teak or oak. Stones traditionally used in local buildings or closely similar to them in colour and texture are to be preferred. The stone including the lettering surface shall not be mirror polished (i.e. highly polished so as to reflect). No monuments (or vases) shall be of synthetic stone or plastic.

VII No monument shall include any raised kerb, railings, stone or other chippings, statuary or book or bird bath. Every monument shall be simple in shape.

VIII No advertisement or trade mark shall be inscribed on the monument, but the name of the mason may be inscribed at the side or on the reverse of a headstone in unpainted and unleaded letters no more than 15mm (1/2in) in height.

3 The approval of the Diocesan Advisory Committee must be obtained for a Cross and any application for one must be submitted to the DAC. A cross is the supreme Christian symbol and if a permanent memorial in this form is required, it should not be unduly repeated and should be individually designed.

4 If the incumbent objects to the proposed wording, he should advise the applicant he/she must apply for a Faculty.

**PART III  
MANAGEMENT REGULATIONS**

5 Under the Parochial Church Councils (Powers) Measure 1956 the duty to care for and maintain the churchyard is laid upon the Parochial Church Council which has all powers necessary for that purpose.

The Chancellor and the Diocesan Advisory Committee recommend that every Parochial Church Council shall make rules for the proper exercise of those powers and duties and to assist them the Chancellor has laid down the following guidelines which in the absence of specific rules being passed by a PCC shall be deemed to apply to the churchyard:-

I The surface of the churchyard shall be kept, as far as possible, level and free of grave mounds. The Parochial Church Council may level any mound at its discretion at any

time more than twelve months after the latest interment in the grave.

- II Bulbs and small annual plants may be planted in the soil of a grave being within the area previously excavated. Plants or flowers may be placed in a removable sunken container (preferably of unpolished aluminum); but unless they are kept tidy the Parochial Church Council may treat the grave as part of the turf and mow over it.
- III Wreaths or cut flowers may be laid direct on any grave or in any vase authorised by these regulations. Where a vase incorporated into the headstone has ceased to be used, the Parochial Church Council may insert a matching core.
- IV No artificial flowers (other than "silk" flowers i.e. having a mixture of polyester/cotton) may be placed in the churchyard and if they are so placed the Parochial Church Council may remove them.
- V The Parochial Church Council may remove flowers of whatever kind and wreaths at their discretion having regard to their state.
- VI Any power exercisable by the Parochial Church Council under these regulations may be delegated by the Council to a person or persons deputed to care for the day to day upkeep and maintenance of the churchyard.

Any query on the interpretation of these Rules should be referred to:-

Diocesan Registrar  
20/32 Museum Street,  
Ipswich,  
IP1 1HZ.

01473 232300

**ANNEX 2**

**Sample application form**

**DIOCESE OF ST. EDMUNDSBURY AND IPSWICH  
APPLICATION TO INCUMBENT FOR PERMISSION TO  
INTRODUCE MEMORIAL INTO A CHURCHYARD**

The Chancellor of the Diocese has delegated to the Incumbents the power to authorise without Faculty:-

1. Simple headstones of natural stone (including slate and grey granite) but not black or red or Scottish granite, or marble. The stone, including the lettering surface, shall not be mirror polished.
2. The headstone shall not be more than 1200mm (4 ft) high 900mm (3 ft) wide and 150mm (6ins) thick and not less than 762mm (2ft 6ins) high, 450mm (1ft 6ins) wide and 75mm (3ins) thick.

(Full details of the extent of the authority granted are contained in the Churchyard Rules obtainable from the Diocesan Registrar. Reference should be made to the rules for further guidance.)

Name of Churchyard .....

Name of Applicant .....

Address .....

Name of Monumental Mason .....

Headstone or Cross .....

Size of Memorial .....

Type of stone to be used .....

Surface Finish .....

Description of any Carving or Decoration .....

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Wording of Inscription .....

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Type of Lettering .....

Colour of Lettering .....

Size of Lettering .....

Particulars of any Vase incorporated in the Memorial.....

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Full Sketch of Memorial showing ground level

1. I have read the current edition of the Notice relating to the Churchyards issue by the Chancellor of the Diocese and agree to abide by its terms.
2. I claim that under the terms of such Notice the Incumbent has power to permit the introduction into his churchyard of the monument described herein.
3. On behalf of the Applicant I apply to the Incumbent to grant permission accordingly
4. I undertake that if permission is granted by the Incumbent the monument will be erected in exact conformity with its description in this application. I will, if requested in the future, provide a suitable core for an unused vase incorporated into the headstone.
5. I further undertake to indemnify the Incumbent against all costs and expenses to which he may be put in respect of any deviation from the undertaking I have given.
6. I will notify the Incumbent beforehand when the memorial is to be installed.
7. I enclose the prescribed fee.

Dated ..... Signed .....  
(Stonemason)

I authorise the stonemason to make the above application on my behalf and I undertake to abide by the terms on which consent is given.

Dated ..... Signed .....  
(Applicant)

**For use by the Incumbent**

If the Incumbent is able and willing to authorise the introduction into the Churchyard of the monument described herein the Incumbent should sign the form, returning one copy to the stonemason and retaining the other.

The fee payable of £            has been paid.

Dated ..... Signed .....  
(Incumbent)

Further copies of this form can be obtained from:  
Churchgates House,  
Cutler Street,  
Ipswich,  
IP1 1UQ

(01473 298533).