**GBC Process - Section 215 Request**

*(Transfer of maintenance of a Closed Churchyard to Local Authority)*

**Introduction**

The purpose of this policy is to outline the process Guildford Borough Council (GBC) has in place to manage the transfer of maintenance of closed churchyards where a request has been made by a church within the Guildford borough boundary to transfer responsibilities to the local authority. The policy also outlines the Council’s approach with regards to maintenance, inspections, and memorial safety testing.

**Background & Regulations**

Churchyards in which burials have been discontinued due to insufficient space are routinely closed by means of an order issued by the Ministry of Justice.

A closed cemetery or churchyard remains the responsibility of the Parochial Church Council until a formal transfer of responsibility, by giving notice under Section 215 of the Local Government Act 1972, occurs. Such a notice requires the Parish Council for the area to take over legal responsibility for maintenance of the facility after a minimum 3-month notice period has been served, however the Parish Council may elect to further serve a reciprocal notice transferring its future obligations for maintenance and inspection of the walls, gates, fences, grass, trees, memorials testing, etc. on the District Council.

It is important to note if, once the Order in Council has been made, and the PCC has not served the requisite notice on the Council pursuant to s215(2) LGA 1972, then the Council has no duty to take over the maintenance of the churchyard.

* Maintenance of the churchyard would include Maintenance of grounds including grass, trees, shrubs, paths, and walls.
* Maintenance of walls paths and boundary fences
* Memorials remain the primary responsibility of the memorial owner. The council will run a rolling 5-year memorial safety testing programme. Where a memorial is deemed to be unsafe, the council will endeavour to locate the owner through church records. In instances where an owner cannot be traced, the Council will decide on an appropriate solution to improve the safety of the memorial by means of a faculty application.

Churchyards which are to be transferred to the Council should be maintained in good order and have been maintained to the satisfaction of the Council at the point of transfer.

Where the PCC or Parish Council wish for a higher level of maintenance or wish to seek an alternative scheme of maintenance, this can be negotiated at the point of transfer or at any later stage. Any additional cost will be borne by the PCC or Parish.

If wishing to submit a section 215 application, please [complete the application form](https://www.guildford.gov.uk/media/35137/GBC-Section-215-Application-Form-v2-acc1/doc/GBC_-_Section_215_Application_Form_v2_acc1.docx?m=638059200204800000), which sets out our requirements. The council requires 12 months’ notice to enact these applications.

**Transfer Process**

* Once the churchyard is closed (Confirmed Closed Burial Order) the Parochial Church Council (PCC) must serve written request on the Parish Council pursuant to take over maintenance of the churchyard
* If the Parish Council rejects the request, then they can give written notice to the Council, using the form attached or on letter head FAO: Chief Executive and copy FAO: Legal Department, requesting the Council to take over responsibility for the closed churchyard
* As part of the request the PCC should include
  + copy of closed burial order
  + name and address of those who will be party to the agreement
  + written rejection from the parish Council
  + any confirmation of recent risk assessments and works carried out on the grounds in question
  + copy of church site boundary and what area is included in the application
* the churchyard and grounds prior to the Council taking over should be in a decent order prior to the Council agreeing to take over responsibility.

It is advisable that the PCC seek independent legal advice to ensure the notice is correctly serviced and elements are captured for the PCC.

If you are wishing to submit a section 215 application, please [complete the application form](https://www.guildford.gov.uk/media/35137/GBC-Section-215-Application-Form-v2-acc1/doc/GBC_-_Section_215_Application_Form_v2_acc1.docx?m=638059200204800000), which sets out our requirements. The Council requires 12 months’ notice to enact these applications.

**What the Council will do on receipt of a section 215**

* The Council will check that the churchyard is within our jurisdiction and the Borough boundary and that within the churchyard boundary there is no land that would not come under the transfer of maintenance
* The authority will ask for information on risk assessments undertaken by the church for memorials or headstones, and memorial safety testing and make safe records
* The authority will also conduct an inspection of the site including inspection and certification of the condition of the following:
  + Boundary walls, fences, gateway, entrance and exits
  + Pathways, roads, hardstanding areas such as parking bays, kerbs, and bollards
  + Trees, shrubs, bushes, grass
* The authority would then assume responsibility for the maintenance of the closed

churchyard after 3 months (if section 215 served) or longer period of 12 months if the church requires more time to improve conditions.

PLEASE NOTE: The council would expect that everything is in a safe and well-maintained condition prior to assuming responsibility.

Guildford Borough Council aims to maintain grounds such as grass, shrubs, tree to a decent standard as best as possible. However, if a church wishes to take on the maintenance of grounds (not memorials) then this can be arranged with a separate agreement between the church and Council outlining responsibilities).

**Any deviation from the maintenance schedule below will be at the discretion of the Council.**

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| **Area of Maintenance** | **Details** |
| Grass cutting | These works will be incorporated into the Councils schedule of landscaping as appropriate. |
| Hedgerows and shrubbery | These works will be incorporated into the Councils schedule of landscaping as appropriate but typically will be clipped annually unless access or safety determines a higher frequency is necessary |
| Trees | The Council Tree Officer or contractor will carry out inspections and relevant works to any trees within the churchyard boundary |
| Boundary walls and fences | These works will be carried out where it is believed that failing to do so may result in significant risk to public or those working in the area or would significantly increase costs if work delayed. |
|  | granted under a faculty agreement. |
| Pathways & hardstanding areas | These works will be carried out where it is believed that failing to do so may result in significant risk to public or those working in the area or would significantly increase costs if work delayed. |
| Notes | Please note the authority reserve the right complete these works internally or to sub contract the works out. |
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**Guildford Memorial Safety Programme**

Guildford Borough Council is implementing a Memorial Safety Programme, which aims to inspect each memorial once every 5 years as a minimum and more frequently if the memorial is deemed medium or high risk.

In regard to the maintenance of memorials, the primary liability will continue to lie with the owner of the memorial as it remains their property.

If a memorial is found to be unsafe or requiring work, the Council will with the aid of the church concerned endeavour to locate and contact the owner of the memorial. If the owner cannot be traced, the authority will then decide on an appropriate solution to make the memorial safe in the interim under the terms of the relevant granted faculty.

PLEASE NOTE: It is not Guildford Borough Council policy to make permanent repairs to memorials.

**Links**

[Apply to close a churchyard - GOV.UK (www.gov.uk)](https://www.gov.uk/government/publications/apply-to-close-a-churchyard)

* Use this link to find Gov form to apply to close a churchyard or transfer responsibility for the maintenance of the closed churchyard to a local parish or district Council.

[Guildford Crematorium and Cemeteries - Guildford Borough Council](https://www.guildford.gov.uk/crematoriumandcemeteries)

* Information about our Cemeteries and how to contact the Bereavement Services Team

**Appendixes**

* [Section 215 Application form](https://www.guildford.gov.uk/media/35137/GBC-Section-215-Application-Form-v2-acc1/doc/GBC_-_Section_215_Application_Form_v2_acc1.docx?m=638059200204800000)