

The Churchwarden

The Office, Duties and
Legal Responsibilities



The Diocese of
Canterbury

2009

A. THE OFFICE

Churchwardens, when admitted, are the Archbishop's lay officers responsible directly to him for the life and work of the church in the parish and their office is accordingly both a privilege and a responsibility. Those who accept the privilege must be prepared to carry out the responsibilities laid upon them from time to time by the Archbishop or the Bishop, or by the Archdeacon and the Area Dean.

"They shall discharge such duties as are by law and custom assigned to them. They shall be foremost in representing the laity and in co-operating with the Incumbent; they shall use their best endeavours by example and precept to encourage the parishioners in the practice of true religion and to promote unity and peace among them. They shall also maintain order and decency in the church and the churchyard, especially during the time of a divine service."

(Canon E1.4)

APPOINTMENT

The appointment of Churchwardens is governed by the "Churchwardens Measure 2001".

It is important to emphasise that once appointed the Churchwarden is an Officer of the Bishop and on Visitations etc. it is a Churchwarden's duty to answer questions about the state of the Parish and to report anything amiss.

The Measure provides for there to be two Churchwardens for every Parish (and since 1983 for every Parish Church) who must be baptised. They should be on the Church Electoral Roll, active communicant members of the Church of England and at least 21 years of age (The Bishop may dispense with any of these three qualifications).

Churchwardens are chosen annually at a Meeting of the Parishioners.

It is important to stress that the appointment is an annual one and Churchwardens must be admitted or re-admitted to office, i.e. at the annual Visitation.

The Measure also provides for resignations (in writing to the Bishop). It should also be noted that the Churchwarden's Office is vacated if he/she is not resident in the Parish and not on the Church Electoral Roll.

Churchwardens Measure - implications for 2009

With the enactment of the Churchwardens Measure in 2002, many parishes and churchwardens are now becoming aware that the maximum permitted continuous period of churchwarden's tenure of 6 years begins to expire at the forthcoming round of annual meetings in 2009.

To clarify, the general rule is that an individual's maximum continuous period of service as a churchwarden of the same parish is six terms of office of one year each after which the churchwarden must take at least a two year break before reappointment. However, whilst the six year period is the norm, a meeting of the parishioners may pass a resolution that the general rule is not to apply to the parish. The guidance to the New Measure says the following:

It is desirable to consider well in advance whether a resolution under this paragraph should be passed and to discuss it at the annual meeting of the parishioners at least a year before it is required so that potential candidates for election in the following year will know the position before deciding to stand for office. However, if the parishioners pass the resolution under Section 3 of The Measure it has immediate effect.

The guidance goes on to state that:

If a churchwarden affected by the six year rule wishes to continue to stand then it can be dealt with in one of two ways.

a) for the person concerned to be nominated, seconded and give his or her consent to serve before the annual meeting of parishioners begins in the normal way. The resolution will then need to be passed at the beginning of the meeting followed by the election of the churchwardens. If the resolution is not passed, the candidacy of a person who falls within the six year rule will fail.

b) to hold a special meeting of the parishioners to consider passing the resolution before the annual meeting to elect the churchwardens is convened.”

B. POWERS AND DUTIES

Church, Churchyard and Contents of Church

The Incumbent is the person in whom the Freehold of the Church and Churchyard is normally vested but possession of both is vested in the Incumbent and Churchwardens jointly (and thus, if any person claims to enter for a purpose other than assisting at a service, both the Incumbent and the Churchwardens can prevent this).

The Incumbent has custody of the key but the Churchwardens have right of access to discharge their duties.

The following list of duties is not exhaustive but includes the chief duties assigned to the Churchwardens by law and those usually assigned by custom:

1. The Churchwardens should be regular and constant in attendance at Divine Worship within the parish.
2. The Churchwardens are responsible, when the parish is vacant, for arranging for services to be taken, in consultation with the Area Dean. If there is no one available to take the services they should be prepared to take them themselves. (Canon B11.1)
3. As officers of the Archbishop, the Churchwardens must answer to the Archbishop or Bishop, or to the Archdeacon and Area Dean as to the state of the parish. They must inform the Bishop of any misconduct or neglect on the part of the Incumbent.
4. Churchwardens are ex-officio members of the Parochial Church Council (PCC) and as such must lead the Council in carrying out all its duties, including co-operating with the Incumbent in promoting in the parish the whole mission of the church, pastoral, evangelistic, social and ecumenical.
5. The Churchwardens should see that the PCC carries out its responsibilities for the care, maintenance and insurance of the fabric of the church, the goods and ornaments of the church and the fencing of the churchyard. Churchwardens should record in a Log Book provided by the PCC, all alterations, additions, removals or repairs to the churches in their care. (Canon F13.4)

6. If any alterations, additions, removals or repairs are proposed to be made in the fabric, ornaments or furniture of the church, it is the duty of the Minister and the Churchwardens to obtain a Faculty before starting the work. Where, however, repairs to a church or redecoration of a church do not involve any substantial alteration, a Certificate issued by the Archdeacon with the approval of the Diocesan Advisory Committee for the Care of Churches usually suffices. (Canon F13.3)

7. **Faculties**

A Faculty is a permission to do something which would otherwise be unlawful. In all but the Canterbury Diocese, this is granted by the Chancellor who is normally a High Court Judge. In Canterbury, because we are special, our Chancellor is called the "Commissary General". The Commissary General's authority is vested in him by the Archbishop.

The Commissary General's powers extend to:-

- i) All consecrated buildings which are or intended for public worship, but excludes the Cathedral.
- ii) Consecrated land.
- iii) Land within the curtilages of consecrated buildings.
- iv) Unconsecrated "licensed" chapels made subject to the jurisdiction by the Archbishop.
- v) Libraries owned by parishes.

The general rule is that a Faculty is required before any change is made in buildings, contents of buildings, land or libraries falling within the above categories.

If you have any queries or doubts as to whether a Faculty should be obtained then please refer to your Archdeacon, or to the Diocesan Registry, or to the DAC.

It should be borne in mind that if any changes are made unlawfully then those responsible may be ordered to make restoration and also pay costs!. In regard to “technical” matters, guidance should be sought from the Diocesan Advisory Committee.

- a) As mentioned earlier, Churchwardens are the Officers of the Bishop and it is their duty to ensure that when a Faculty or an Archdeacon’s Certificate is required, by Law the necessary action is taken to obtain it.
 - b) The “Ecclesiastical Exemption” (by which most alterations to Church buildings fall outside the normal local authority planning process) is consistently under attack from certain bodies. Although Faculty jurisdiction extends to wide areas (such as the removal of pews etc.) which would not normally require planning permission - where it does relate to such matters as alterations and additions then it is essential that the Faculty Jurisdiction Measure be complied with very strictly. Any non-compliance will give the critics every excuse to seek the abolition of the exemption. In such circumstances the consequent bureaucracy and delays involved would make the Faculty procedure look like simplicity itself! ! !
8. The Churchwardens are the “owners” of the plate, ornaments, furniture and furnishings of the church. They must keep the inventory up to date. They should check the items at least once a year to ensure that none have been lost. A certificate to this effect in the inventory should be signed at every Annual Parochial Church Meeting, when a report should be made on the furnishings and fabric of the church. The Churchwardens should ensure that the Church Plate and other valuable furnishings, the alms boxes, etc. are secure against theft. (Canon E1:5)

All moveable furniture and ornaments of the Church are in the legal ownership of the Churchwardens but the clergy must be allowed the use of these for their ministrations. The Churchwardens must not remove or add furnishings or ornaments without a Faculty or an Archdeacon's Certificate. (NB The care, maintenance, preservation and insurance of the fabric of the Church and of the goods and ornaments and the repair of the Churchyard fence and other structures are the responsibility of the Parochial Church Council).

9. On going out of office the Churchwardens shall duly deliver to their successors any goods of the church remaining in their hands together with the said inventory, which shall be checked by their successors.

(Canon E1:5)

10. **Maintenance of Order**

This is the Churchwardens' duty in the Church and the Churchyard and particularly during Divine Service. They can remove anyone causing a disturbance during the Service (e.g. it has been held that a Churchwarden could properly remove a man's hat during a Service!).

Under the Ecclesiastical Jurisdiction Act 1860 "riotous, violent or indecent" behaviour in a Church or Churchyard is an offence - leading to arrest by a Constable or a Churchwarden.

The Churchwarden cannot interfere with the conduct of the Service by the Minister unless the disturbance amounts to being actually "riotous, violent or indecent".

11. The Churchwardens are responsible for the seating of the congregation in church, and for the maintenance of good order especially during services. They are assisted in these duties by the Sidespersons. The Churchwardens should arrange the roster of Sidespersons duties and ensure that Sidespersons know what their duties are.

They can direct people where to sit and where not to - unless that person has a right (e.g. Faculty). It should be noted that allocation cannot be for all times as the Churchwardens' successors must be able to re-arrange the seating.

12. The Churchwardens are responsible for the collection of alms and dues taken in the church (helped by the Sidespersons), for the recording of the sums received in the church service register, and for the safe keeping and proper disposal of the money.

Collections form part of the funds of the Parochial Church Council, but are disposed of as the Minister and the Parochial Church Council jointly appoint.

13. The Churchwardens must provide the bread and wine for the services of Holy Communion, with the advice and direction of the Incumbent and at the expense of the PCC.
(Canon B17)
14. When other clergy and readers take services during the temporary absence of the Incumbent in sickness or on holiday, the Churchwardens should welcome and entertain them, and make sure that they are duly licensed and are paid their fees, if appropriate, and travelling expenses.
15. The Churchwardens should ensure that the Incumbent is relieved of administrative work to do with the parish magazine, the heating, lighting and cleaning of the church and hall, the repair or replacement of damaged hymn and prayer books, etc.
16. The Churchwardens should maintain close and good relationships with the Church Treasurer and should encourage the PCC to discharge its responsibilities for insurance, repairs and replacements, and for seeing that the Parish Share is paid to the Diocese regularly and on time. They should ensure that the Incumbent's Parish Working Expenses are reviewed annually by the PCC and refunded in full. If no Treasurer can be found, the duty falls on the Churchwardens.

17. The Churchwardens should encourage their clergy to adhere to the Diocesan Guidelines for annual holidays, ie the desirable minimum annual holiday is five full weeks including Sundays. These are often taken over three weeks in the summer with an additional week after Christmas and Easter, but the spread throughout the year is a matter for the minister's own decision. In addition to this, time should be allowed for approved In-Service Training courses, conferences and retreats.

The Bishops expect every minister in parochial employment to take one day off in every week and recommend that this day should be known in the parish so that all but the most urgent calls may be avoided.

18. During a vacancy the Churchwardens have extra duties to perform and are sent detailed notes about these from the Diocesan Office. The Area Dean is in overall charge of the parish and consults with the Churchwardens about the necessary continuing pastoral care of the parish by visiting clergy and Readers. When a new appointment is being made the Churchwardens and the PCC have certain rights under the Patronage (Benefices) Measure 1986. These will be explained at the time of a vacancy.

Under the Parsonage (Benefices) Measure 1986, Churchwardens do not have an automatic role in the appointment of the Incumbent.

19. The Churchwardens of parishes and districts shall be chosen in accordance with the Churchwardens Measure 2001, and any other Measure, Act, or scheme affecting Churchwardens. (Canon E1:1)
20. At a time and place to be appointed by the Ordinary, as soon as may be after the thirtieth day of April in each year, each person chosen for the office of Churchwarden shall appear before the Ordinary, or his/her will substitute duly appointed, and be admitted to the office of churchwarden after subscribing the declaration that he/she will faithfully and diligently perform the duties of his/her office, and

making the same in the presence of the Ordinary or substitute. (Canon E1:2)

21. Subject to any provision of any Measure, Act, or scheme relating to the resignation or vacation of their office, the Churchwardens so chosen and admitted shall continue in their office until they, or others as their successors, be admitted in like manner by the Ordinary. (Canon E1:3)

22. Actions by and against Churchwardens

Churchwardens are not a “corporation” in the legal sense (i.e. having a corporate and continuous existence) but they do have certain authorities i.e. the holding of Church property (other than land) in perpetual succession. They can thus bring actions in their own names for matters which arose during the period of office of their predecessors (but they cannot be sued for such a matter).

Both Churchwardens must concur in and be partners to the taking of legal proceedings.

However, contracts for example, for the supply of articles for use in the Church or repairs etc. should be entered into by the Parochial Church Council - who are then parties to any such actions.

It should also be noted that the Incumbent and the Churchwardens may be a quasi corporation under the School Sites Act for holding Church Schools and they also have certain responsibilities in regard to land under the Incumbents and Churchwardens (Trusts) Measure.

GENERAL

Whenever you require help or guidance in executing your duties, never hesitate to get in touch with your Archdeacon or Area Dean or the Diocesan Registry, or the DAC.

The Diocesan Advisory Committee is located at
Old Palace, The Precincts,
Canterbury CT1 2EE
telephone: 01227 478390
email: idodd@propcant.org
Secretary: Ian Dodd

The Diocesan Registry is situated at:
Minerva House
5 Montague Close
LONDON SE1 9BB
Diocesan Registrar: Owen Carew-Jones

The Registry team consists of Roger Clayton Pearce, Adena Harrison and Kevin Sims. Clergy and parishes are welcome to contact the team on 020 7593 5110 or by email to registry@wslaw.co.uk

FURTHER READING REFERENCE

A Handbook for Churchwardens
and Parochial Church Councillors.
Ed Macmorran, Moore and Briden
(published by Mowbrays)

The Churchyards Handbook
(published by the Council for the Care of Churches)

Practical Church Management;
James Behrens (published by Gracewing)

