



# New Southgate Cemetery Act 2017

## 2017 CHAPTER ii

### 1 Citation and commencement

This Act may be cited as the New Southgate Cemetery Act 2017 and comes into force at the end of 28 days beginning with the day on which this Act is passed.

### 2 Interpretation

In this Act—

“the borough” means the London Borough of Barnet;

“burial” includes the interment of cremated remains and “right of burial” includes “right of interment” accordingly;

“the burial authority” means—

- (a) in relation to the transferred land, the National Spiritual Assembly of the Bahá'is of the United Kingdom, and
- (b) in relation to any other part of the cemetery, New Southgate Cemetery and Crematorium Limited;

“the cemetery” means the New Southgate Cemetery referred to in the preamble to this Act, constructed and administered under the Great Northern London Cemetery Acts 1855 to 1976 and the New Southgate Cemetery and Crematorium Limited Act 1990;

“civil partner” includes former civil partner;

“Commonwealth war burial” means a burial of any member of the armed forces of His Majesty who died in the war of 1914 to 1921 or in the war of 1939 to 1947 or of any other person for whose burial the Commonwealth War Graves Commission is responsible;

“Commonwealth war memorial” means any memorial erected, owned or maintained by the Commonwealth War Graves Commission;

“grave” includes any grave space and any crypt, vault, catacomb, arch, brick grave, mausoleum, columbarium or other place of interment;

“memorial” means any monument, headpiece, headstone, flatstone, slab, footstone, borderstone, kerbstone, tombstone or tablet, and includes any wall, kerb or railing protecting, enclosing or marking a grave or grave

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space or memorial (including any permanent covering thereon), or any other commemorative object placed in the cemetery including vases, flower containers or other similar objects;

“public or common grave” means a grave in respect of which no right of burial has been acquired by or granted to, or is otherwise vested in, any individual or body other than a local authority or the burial authority;

“register of grants” means the register of grants of exclusive rights of burial, and of rights to erect or place memorials, maintained by the burial authority;

“registered address” means an address registered in the register of grants;

“registered number” means a number registered in the register of grants;

“registered owner”—

- (a) in relation to any right of burial means the person at the time in question named as the owner in the register of grants; and
- (b) in relation to any memorial means the person at the time in question named in the said register as the person to whom the right to erect or place that memorial has been granted, or, if no such person is named, the registered owner of the right of burial in the grave in or on which the memorial is erected or placed;

“relative”, in relation to any person, means any of the following—

- (a) that person’s spouse;
- (b) that person’s civil partner;
- (c) any lineal ancestor, lineal descendant, brother, sister, aunt, uncle, nephew, niece or first cousin of that person or of that person’s spouse or civil partner

“spouse” includes former spouse; and

“transferred land” means that part of the cemetery defined as such in the New Southgate Cemetery and Crematorium Limited Act 1990.

### **3 Power to extinguish rights of burial**

- (1) Subject to subsection (2), where in respect of any grave space in the cemetery a right of burial has not been exercised for 75 years or more from the date of the latest burial in the grave space or, if there has been no burial in the grave space, from the date of the grant of the right of burial in the grave space, the burial authority may, in accordance with the provisions of this section, extinguish the right of burial in that grave space.
- (2) No right of burial granted after the passing of this Act for any period longer than 75 years is to be extinguished under this section.
- (3) The power of the burial authority under subsection (1) to extinguish a right of burial in any grave space includes the power to remove any memorial in or on the grave space.
- (4) Before extinguishing a right of burial or removing any memorial under the powers of this section, the burial authority must—
  - (a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in the borough, with an interval between the dates of publication of not less than six clear days;
  - (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and
  - (c) serve such a notice upon—

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- (i) the registered owner of the right of burial at that person's registered address;
  - (ii) the Commonwealth War Graves Commission; and
  - (iii) the Historic Buildings and Monuments Commission for England.
- (5) Each of the notices must—
  - (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all grave spaces in respect of which it is proposed that rights of burial should be extinguished and stating whether it is proposed that any memorials should be removed;
  - (b) specify the date on which it is intended that the rights should be extinguished and any memorial removed, which date must not be earlier than six months after the date of the later of the two publications, or the date on which notice is first displayed, or the date on which notice is served, whichever is the last; and
  - (c) state the effect of subsections (6) to (9).
- (6) If notice of objection to the extinction of a right of burial in any grave space is given to the burial authority before the date specified under subsection (5)(b) by the registered owner of the right of burial and that objection is not withdrawn, the right of burial to which the objection relates must not be extinguished under this section, and if notice of any other objection to the extinction of any rights of burial or to the removal of any memorial, and of the ground of any such objection, is given to the burial authority before the date specified under subsection (5)(b) and is not withdrawn, any rights or memorial to which such last mentioned objection relates must not be extinguished or removed without the consent of the Secretary of State.
- (7) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified under subsection (5)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it.
- (8) As compensation for any right of burial extinguished under this section the burial authority must, on a claim being made by the registered owner of the right of burial within six months from the extinguishment of that right, pay to the owner such sum representing the value of that right as may be agreed between the burial authority and the owner or, in default of agreement, determined by arbitration.
- (9) In any arbitration under subsection (8) the reference must be to a single arbitrator to be appointed by agreement between the parties or, in default of agreement, to be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either party after giving notice in writing to the other party.
- (10) The powers conferred by this section must not, except with the prior written agreement of the Commonwealth War Graves Commission, be exercised by the burial authority in respect of—
  - (a) any grave in which there is a Commonwealth war burial, or
  - (b) any grave space in or on which there is a Commonwealth war memorial.

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#### **4 Power to disturb human remains**

- (1) The burial authority may disturb or authorise the disturbance of human remains interred in a grave in the cemetery for the purpose of increasing the space for interments in the grave where—
  - (a) the burial authority has extinguished rights of burial in the grave under section 3; or
  - (b) the grave is a public or common grave.
- (2) A person authorised by or under subsection (1)(b) to disturb human remains within a public or common grave may remove any memorial in or on the grave space relating to the person whose remains are proposed to be disturbed.
- (3) No human remains may be disturbed under this section if they have been interred for a period of less than 75 years.
- (4) Any human remains disturbed under subsection (1) must be reinterred either—
  - (a) in their original grave; or
  - (b) in another grave within the cemetery, such grave being below the level of the ground and consisting wholly or substantially of earth.
- (5) Before disturbing any human remains, or removing any memorial, under this section the burial authority must—
  - (a) publish a notice of their intention to do so once in each of two successive weeks in a newspaper circulating in the borough, with an interval between the dates of publication of not less than six clear days;
  - (b) display such a notice in a conspicuous position at each of the principal entrances to the cemetery; and
  - (c) serve such a notice upon—
    - (i) any registered owner of the extinguished right of burial or the memorial proposed to be removed at that person's registered address;
    - (ii) the Commonwealth War Graves Commission; and
    - (iii) the Historic Buildings and Monuments Commission for England.
- (6) Each of the notices referred to in subsection (5) must—
  - (a) contain full particulars of the burial authority's proposals including a specification of the registered number or other description of all graves in which it is proposed that the human remains are to be disturbed and stating whether it is proposed that any memorials should be removed;
  - (b) specify the date after which it is intended that the work should be undertaken, which must not be earlier than six months after the date of the later of the two publications, the date on which the notice is first displayed, or the date on which the notice is served, whichever is the last; and
  - (c) state the effect of subsection (8).
- (7) A single notice may be used for the purposes of this section and section 3.
- (8) If notice of objection to the proposed disturbance of human remains is given to the burial authority before the date specified in subsection (6)(b) by—
  - (a) the registered owner of the extinguished right of burial;
  - (b) the registered owner of a memorial erected or placed in or on any grave spaces specified under subsection (6)(a), whether or not the memorial itself is proposed to be disturbed;

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- (c) a relative of the person whose remains are proposed to be disturbed, and that objection is not withdrawn, the burial authority may not exercise its powers under this section for a period of 25 years, beginning with the date of the publication of the first notice under subsection (5)(a).
- (9) Any memorial removed by the burial authority under this section remains the property of the owner of it, but if such owner does not claim it within a period of six months after the date specified in subsection (6)(b), the burial authority may put the memorial to such use as the burial authority considers appropriate or the burial authority may destroy it.
- (10) A person authorised by or under subsection (1) to disturb human remains must comply with any directions given by the Secretary of State with respect to the removal and reinterment of any human remains in any case other than a case falling within subsection (12).
- (11) Subject to subsection (12), nothing in this section affects the jurisdiction of the consistory court of the diocese over consecrated land which is used, or is available for use, for the interment of human remains.
- (12) Where the burial authority proposes to disturb any human remains in consecrated land the burial authority may not exercise its powers under this section without first obtaining a faculty, with or without conditions attached to it, from the consistory court of the diocese in which the land is situated, and any objection to the proposed disturbance of human remains from consecrated land by any person under subsection (8) must be heard and determined by that consistory court.
- (13) The powers conferred by this section must not, except with the prior written agreement of the Commonwealth War Graves Commission, be exercised by the burial authority in respect of—
- (a) any grave in which there is a Commonwealth war burial, or
  - (b) any grave space in or on which there is a Commonwealth war memorial.
- (14) The provisions of section 25 of the Burial Act 1857 (offence of removal of body from burial ground) do not apply to a removal carried out in accordance with the provisions of this section.

## **5 Records**

- (1) The burial authority must cause a record to be made of each memorial removed under this Act containing
- (a) a copy of any legible inscription on it; and
  - (b) if it is intended to preserve the memorial, a statement showing where it has been taken,
- and the burial authority must deposit a copy of the record with the Registrar General.
- (2) The burial authority must maintain a record of any remains in the cemetery disturbed under the powers of section 4, showing—
- (a) the date of the disturbance;
  - (b) the registered number of the grave;
  - (c) the names, in full, of the person whose remains are disturbed;
  - (d) the book, page and entry number of the entry of burial or, where the burial was entered electronically, the number of the entry;

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- (e) particulars of the authority for disturbance; and
  - (f) the registered number of the grave in which the remains are reinterred and the date of reinterment.
- (3) As soon as reasonably practicable after any disturbance, the burial authority must complete the record as regards paragraphs (a) to (f) of subsection (2).
- (4) The record maintained under subsection (2) must at all reasonable times be available for consultation by any person free of charge.