



# New Southgate Cemetery Act 2017

## 2017 CHAPTER ii

### 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.

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- (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;
  - (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.

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- (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.