

SCHEDULE 1

Article 4

ACCESS TO CEMETERIES

1. A burial authority may construct such roads to a cemetery as they think fit and, subject to paragraph 2, may widen or otherwise improve any road leading to a cemetery or giving access to such a road.
2. A burial authority shall not widen or otherwise improve any road which is not vested in them except with the consent of the highway authority or other person in whom it is vested.
3. A burial authority shall be responsible as such for maintaining in a proper state of repair any road constructed by them or any predecessor of theirs, not being a highway which is for the time being maintainable at the public expense.

SCHEDULE 2

Article 10

BURIAL RIGHTS, RIGHTS TO ERECT MEMORIALS, AND AGREEMENTS FOR MAINTENANCE OF GRAVES AND MEMORIALS

PART I

EXERCISE OF RIGHTS

1. No burial shall take place, no cremated human remains shall be scattered and no tombstone or other memorial shall be placed in a cemetery, and no additional inscription shall be made on a tombstone or other memorial, without the permission of the officer appointed for that purpose by the burial authority.
2. No body shall be buried in a grave in such a manner that any part of the coffin is less than three feet below the level of any ground adjoining the grave:
Provided that the burial authority may, where they consider the soil to be of suitable character, permit a coffin made of perishable materials to be placed not less than two feet below the level of any ground adjoining the grave.
3. No body shall be buried in a grave unless the coffin is effectively separated from any coffin interred in the grave on a previous occasion by means of a layer of earth not less than six inches thick.
4. When any grave is reopened for the purpose of making another burial therein, no person shall disturb any human remains interred therein or remove therefrom any soil which is offensive.
5. Every walled grave or vault shall be properly constructed of suitable materials.
6. Within 24 hours of any burial in a walled grave or vault, the coffin shall be—
 - (a) embedded in concrete, and covered with a layer of concrete not less than six inches thick;
or
 - (b) enclosed in a separate cell or compartment of brick, slate, stone flagging or precast concrete slabs of a 1:2:4 mix, in any case not less than two inches thick, in such a manner as to prevent, as far as may be practicable, the escape of any noxious gas from the interior of the cell or compartment.
7. Any person to whose order a body is buried in a grave in respect of which an exclusive right of burial has been granted shall, as soon as conveniently may be after the subsidence of the earth has been completed, cause the surface of the grave to be covered with any tombstone or other memorial

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in respect of which a right has been granted by the burial authority or any predecessor of theirs, or with fresh turf, or, where the burial authority permit, with such flowering or other plants, or in such other manner, as may be permitted.

8. Where the burial authority permit uncoffined burials, any reference in this Part to a coffin includes a reference to the wrappings of an uncoffined body.

PART II

PROVISION AS TO GRANTS, EXTENSION OF THE PERIODS THEREOF AND MATTERS CONCERNING RIGHTS

1.—(1) A grant under article 10 shall be in writing signed by the officer appointed for that purpose by the burial authority.

(2) Any extension of the period of such a grant or of a grant made under article 9(1) of the order of 1974 or any enactment replaced by that provision shall also be in writing signed by such an officer.

2. A burial authority shall—

- (a) maintain a register of all rights granted by them or any predecessor of theirs under article 10(1) or under article 9(1) of the order of 1974, which shall show as respects each such right the date on which it was granted, the name and address of the grantee, the consideration for the grant, the place in which it is exercisable and its duration; and
- (b) subject to the provision of section 229 of the Act, preserve registers of the rights granted under section 33 of the Burial Act 1852, section 40 of the Cemeteries Clauses Act 1847, or a corresponding provision in any local Act, maintained by them before 1st April 1974 or transferred to them by any order made under section 254 of the Local Government Act 1972.

3. Rights to which paragraph 2 applies may be assigned by deed or bequeathed by will.

4. A burial authority shall, subject to such investigation as they think proper, record particulars of any assignment or transmission of any such right notified to them in the register maintained or preserved under paragraph 2.

5. A register under paragraph 2 shall at all reasonable times be available for inspection by any person free of charge.

6. A burial authority may charge such fees as they think proper for the making by them of searches in, and the provision of certified copies of entries in, a register under paragraph 2.

PART III

DETERMINATION OF CERTAIN RIGHTS AND AGREEMENTS

1.—(1) This paragraph applies to the following rights and agreements granted or entered into by a burial authority or any predecessor of theirs at a time before 1st April 1974 and to the rights and agreements made or entered into between 31st March 1974 and 28th June 1974 which were validated by article 7 of the Local Authorities etc. (Miscellaneous Provision) (No. 3) Order 1974—

- (a) all rights in respect of any grave space granted under a provision falling within paragraph 2(b) of Part II in perpetuity, or for a period exceeding 75 years from the date of the grant;
- (b) any other right to place and maintain a tombstone or other memorial so granted; and

(c) any agreement to maintain a grave, vault, tombstone or other memorial in a cemetery either in perpetuity or for a period ending more than 100 years after the date of the agreement.

(2) Where any rights described in paragraph 1(1)(a) or (b) have not been exercised, the burial authority may, at any time after the expiration of 75 years beginning with the first day on which any such rights were granted, serve notice on the owner of the rights of their liability to determination under this paragraph, and the rights shall determine by virtue of the notice unless, within 6 months of the date of service, the owner notifies the authority in writing of his intention to retain them.

(3) In the case of any agreement described in paragraph 1(1)(c), the burial authority may at any time after the period of 100 years beginning with the date of the agreement serve a like notice on the person entitled to its benefit, and the agreement shall determine by virtue of the notice unless, within 6 months of the date of service, that person notifies the authority in writing of his intention that the agreement should continue in force.

2. Where a burial authority are entitled to serve a notice under sub-paragraph (2) or (3) of paragraph 1 in respect of any rights or agreement, but the specified circumstances exist in respect of the owner of the rights or, as the case may be, the person entitled to the benefit of the agreement, they may instead—

- (a) display the notice in conspicuous positions at the entrances to the cemetery; and
- (b) publish the notice in two successive weeks in the newspaper or newspapers which in their opinion would secure the best publicity in the area served by the cemetery,

and the sub-paragraph in question shall then have effect as if the notice had been duly served thereunder on the date on which it was first published pursuant to item (b) of this paragraph.

SCHEDULE 3

Article 16

REMOVAL OF MEMORIALS AND LEVELLING, ETC

Restrictions on exercise of powers

1. The powers described in article 16(2) shall not be exercisable—
 - (a) contrary to the terms of the agreement, in respect of any grave, vault, tombstone or other memorial which the burial authority are bound by agreement to maintain;
 - (b) within the period of the grant or of any extension thereof, in respect of any tombstone or other memorial placed in the cemetery in pursuance of a grant made after the coming into operation of this order;
 - (c) within the period of the grant or of any extension thereof, except where a reservation as to the exercise of powers under any local enactment was made on the making of the grant, in respect of any tombstone or other memorial placed in the cemetery in pursuance of a grant made under the order of 1974;
 - (d) in respect of any other tombstone or other memorial placed in the cemetery (otherwise than under a permission expressed to be revocable) within the 20 years preceding the first publication of the notice required by paragraph 3,

except with the consent in writing of the person entitled to the benefit of the agreement to maintain, the owner of the right to place and maintain the tombstone or other memorial or the person granted permission to place the tombstone or other memorial.

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2. The said powers shall not be exercisable in relation to any building of special architectural or historic interest included in a list compiled or approved under section 54 of the Town and Country Planning Act 1971 unless the works have been authorised under section 55(2) of that Act.

Notification of exercise of powers

3. Before exercising the powers described in article 16(2) the burial authority shall—
- (a) display a notice of their intention to do so in conspicuous positions at the entrances to the cemetery and if the powers are to be exercised only in any area of the cemetery in conspicuous positions in or adjoining such area;
 - (b) publish the notice in two successive weeks in the newspaper or newspapers which in their opinion would secure the best publicity in the area served by the cemetery;
 - (c) where the area of the cemetery in which the powers are to be exercised, or any part thereof, has been consecrated or set apart for the use of a particular denomination or religious body, notify the rural dean or persons representative of the particular denomination or religious body, and where such dean or persons within the 3 months following the notification make any representations to them, consider such representations with them; and
 - (d) if they have not already done so, comply with article 20(5).

4. Before exercising the said powers in respect of any grave on which there is a tombstone or other memorial the burial authority shall, in the circumstances in which this paragraph applies, subject to paragraph 6, serve copies of the said notice and of paragraphs 9, 10, 12, 15, 17 and 18 on the owner of the right to place and maintain it or (if they have a record of his name and address) on the person granted permission to place it.

The circumstances in which this paragraph applies are where—

- a burial in the grave has taken place;
- the right to place and maintain, or the permission to place, the tombstone or other memorial has been granted or renewed;
- the right, or permission, to place any additional inscription on the tombstone or other memorial has been granted; or
- notification of any assignment or transmission of the right to place and maintain the tombstone or other memorial, or of the address of the owner of such right or of the person granted permission to place it, has been given,

within the 30 years preceding the first display of the notice under paragraph 3.

5. Before exercising the powers described in article 16(2)(c) in respect of any other grave the burial authority shall, in the circumstances in which this paragraph applies, subject to paragraph 6, serve copies of the said notice and of paragraphs 11, 14, 17 and 19 on the owner of the right described in article 10(1)(a)(i) or (ii) in respect of the grave.

The circumstances in which this paragraph applies are where—

- a burial in the grave has been made in exercise of the right described in article 10(1)(a)(i) or (ii); or
- notification of any assignment or transmission of such right, or of the address of the owner thereof, has been given,

within the 30 years preceding the first display of the notice under paragraph 3.

6. Paragraph 4 or 5 shall not apply in relation to any owner or person where the specified circumstances exist in respect of him.

7. The said notice shall—
- (a) contain brief particulars of the proposals and unless the proposals are incapable of further statement specify an address at which further particulars are obtainable free of charge;
 - (b) specify a date before which the carrying out of the proposals will not be commenced, being a date not less than 3 months following the completion of the action required by paragraph 3; and
 - (c) indicate that particulars as to—
 - (i) the objections which can be made to the proposals;
 - (ii) requests for the re-erection of tombstones or other memorials; and
 - (iii) the removal of tombstones and other memorials,are obtainable free of charge from a specified address.

Objections

8. The burial authority shall consider all objections made to the proposals.

9. If notice of objection, and of the grounds thereof, to the proposals in respect of any tombstone or other memorial placed and maintained on a grave in pursuance of a right is given—

by the owner of such right; or

by a relative of any person buried in the grave,

to the burial authority before the date specified in the notice under paragraph 3, the proposals shall not be carried out in respect of that tombstone or other memorial unless the objection is withdrawn:

Provided that if the burial authority consider that the grave has been long neglected they may make representations to the Secretary of State, and, if the Secretary of State approves, the proposals may be carried out in respect of the tombstone or other memorial after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

10. If notice of objection, and of the grounds thereof, to the proposals in respect of any tombstone or other memorial placed on a grave in the exercise of a permission not expressed to be revocable is given—

by the person to whom permission was granted; or

by a relative of any person commemorated by the memorial,

to the burial authority before the date specified in the notice under paragraph 3, the proposals shall not be carried out in respect of that tombstone or other memorial unless the objection is withdrawn:

Provided that the burial authority may make representations to the Secretary of State, and, if the Secretary of State approves, the proposals may be carried out in respect of the tombstone or other memorial after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

11. If notice of objection, and of the grounds thereof, to the levelling of any grave not included in paragraph 9 or 10 in exercise of the powers set out in article 16(2)(c) is given—

by the owner of a right described in article 10(1)(a)(i) or (ii) in respect of the grave; or

by a relative of any person buried in the grave,

to the burial authority before the date specified in the notice under paragraph 3, the grave shall not be levelled unless the objection is withdrawn:

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Provided that the burial authority may make representations to the Secretary of State, and, if the Secretary of State approves, the grave may be levelled after the expiration of two months after notification of the Secretary of State's approval by the burial authority to the objector.

Removal of tombstones

12. Where the burial authority propose to re-erect at another place in the cemetery or elsewhere, or to remove from the cemetery and destroy, any tombstone or other memorial, not being a tombstone or other memorial provided by the Commonwealth War Graves Commission, the owner of the right to place and maintain, or the person granted permission to place, the tombstone or other memorial may, whether or not he gives notice of objection under paragraph 9 or 10, claim the tombstone or other memorial. A claim under this paragraph shall be made before the date specified in the notice under paragraph 3 or, where the tombstone or other memorial is to be removed with the approval of the Secretary of State, within the period of two months after the notification required by paragraph 9 or 10.

The tombstone or other memorial shall be removed by the person claiming it at such date as may be arranged between such person and the burial authority or if the burial authority give notice to such person that it has been removed from the ground or dismantled, and is available for removal from the cemetery, within one month of such notice.

Identification of graves

13. Before levelling the surface of any grave or removing any tombstone or other memorial or other identification from a grave, the burial authority shall ensure that the situation of the grave is shown in the plan required by article 9.

Identification marks and substitute memorials

14. In respect of any grave levelled by them in exercise of the powers set out in article 16(2)(c), the burial authority may, and shall if so requested in writing by—

- the owner of a right described in article 10(1)(a)(i) or (ii) in respect of the grave, or
- a relative of any person buried in the grave,

within a year of the date specified in the notice under paragraph 3 (whether such owner or relative made objection under paragraph 11 or not), provide at their own expense such identification mark as they consider adequate.

15. Where the burial authority remove from a grave either the whole of an existing tombstone or other memorial or the part thereof containing any material particulars they may, and shall if so requested by—

- the owner of the right to place and maintain, or the person granted permission (not expressed to be revocable) to place, the tombstone or other memorial, or
- a relative of any person buried in the grave,

within a year of the date specified in the notice under paragraph 3 (whether such owner or relative made objection under paragraph 9 or 10 or not), place on the grave at their own expense such memorial stone or tablet as they consider suitable.

Records of memorials

16. The burial authority shall make and keep—

- (a) a record of the tombstones and other memorials removed from graves, showing whether they have been destroyed or re-erected by them in the cemetery or elsewhere and if so re-erected of the positions in which they have been re-erected; and
- (b) a photographic or other record of all legible inscriptions on the tombstones and other memorials destroyed.

Interpretation

- 17.** In this Schedule, “relative” means , in relation to any person buried in a grave—
- a husband or wife;
 - a child or grandchild;
 - a grandparent;
 - a parent or step-parent;
 - a brother or sister or half-brother or half-sister;
 - an uncle or aunt or a child thereof.

In the application of this paragraph, an adopted person to whom sub-paragraphs (1) and (2) of paragraph 3 of Schedule 1 to the Children Act 1975 did not apply shall be treated as if the said paragraphs had applied to him.

18. In this Schedule, any reference to a permission to place a memorial includes a permission granted by the burial authority or any predecessors of theirs, and any reference to the person granted such a permission includes a reference to his personal representatives.

19. In paragraphs 5, 11 and 14, any reference to a right described in article 10(1)(a)(i) or (ii) includes a reference to any right granted under sub-paragraph (a) of article 9(1) of the order of 1974 or any enactment replaced by that sub-paragraph.

General saving

20. Nothing in article 16(2) or this Schedule shall affect any right described in article 10(1)(a)(i) or (ii).

23rd December 1976

Peter Shore
Secretary of State for the Environment

5th January 1977

John Morris
Secretary of State for Wales